

AGENDA

MILWAUKIE CITY COUNCIL OCTOBER 5, 2004

MILWAUKIE CITY HALL
10722 SE Main Street

1943rd MEETING

REGULAR SESSION - 6:30 p.m.

- I. **CALL TO ORDER**
Pledge of Allegiance
2. **PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. **Disability Employment Awareness Month -- Proclamation**
 - B. **Recognize Rick Farasy for Contributions to Island Station Neighborhood Association**
 - C. **Advisory Board Interview – Riverfront Board**
3. **CONSENT AGENDA** *(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)*
 - A. **City Council Minutes of September 7 & 21, 2004**
 - B. **OLCC Application for Duffy's Irish Pub – 11050 S.E. 21st Avenue**
 - C. **Garbage Franchise Extension -- Resolution**
 - D. **Transfer of Appropriations -- Resolution**
4. **AUDIENCE PARTICIPATION** *(The Mayor will call for statements from citizens regarding issues relating to the City. It is the intention that this portion of the agenda shall be limited to items of City business which are properly the object of Council consideration. Persons wishing to speak shall be allowed to do so only after registering on the comment card provided. The Council may limit the time allowed for presentation.)*
5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **Convert the Design & Landmarks Commission to a Committee – Ordinance (John Gessner)**
 - B. **Transportation System Development Charge – Resolution (Brion Barnett/Paul Shirey)**

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)*

- A. **Agreement with Clackamas Cable Access Board (JoAnn Herrigel)**
- B. **Recommendation for Tillamook Branch Light Rail Alignment and Alternative 2.5 (Kellogg Lake) Transit Center Site – Resolution (Mike Swanson)**

7. **INFORMATION**

Planning Commission Minutes, July 13 and August 10, 2004

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may go into Executive Session immediately following adjournment at pursuant to ORS 192.660(2).

All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

PROCLAMATION

WHEREAS, twenty percent of the population of the United States of America is comprised of people with disabilities; and

WHEREAS, more than two-thirds of adults with disabilities in the country desire to work but cannot find employment; and

WHEREAS, the American with Disabilities Act provided civil rights protection for America's 49 million persons with disabilities.

NOW, THEREFORE, be it resolved that I, James Bernard, Mayor of the City of Milwaukie, Oregon, do hereby proclaim the month of October as

DISABILITY EMPLOYMENT AWARENESS MONTH

In the City of Milwaukie and ask all our citizens to join us in its observance by learning about people with disabilities, their strengths, abilities, and the programs that serve their needs.

James Bernard, Mayor

ATTEST:

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION SEPTEMBER 7, 2004

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Councilors present: Barnes, Lancaster, Loomis, and Stone.

Staff present: City Manager Mike Swanson, City Attorney Gary Firestone, Finance Director Stewart Taylor, Community Development and Public Works Director Alice Rouyer, Community Services Director JoAnn Herrigel, Planning Director John Gessner, Engineering Director Paul Shirey.

Revise Home Occupation Application Process

Mr. Gessner indicated the proposed measure would reduce administrative costs and the burden to the applicant associated with the annual home occupation renewals. The municipal code requires that home occupations be renewed annually, and he understood the intent of doing that was to diminish the negative neighborhood impacts. The Planning Commission was supportive of this proposal. The intent is not to change the regulations but to eliminate the annual renewal process. He characterized the review process as one of paper handling that adds no real value to the process. Code Compliance problems are relatively low with home occupations. He recommended revising the code to eliminate the annual renewal process. There have been concerns about the application process being the informational reminder for the business owners' as to what they may and may not do under home occupation regulations. He suggested providing annual information to the business operators about these regulations in the form of an insert with the business registration renewal.

Councilor Stone thought it was great that there were not a lot of code violations. Were the three cases in two years discovered via the application renewal process or some other way?

Mr. Gessner replied they were discovered via complaints and staff observations.

Councilor Stone understood there would be some cost involved if the City continued to distribute information on the regulations. It appeared it would be a wash in terms of staff time and recouping the costs.

Mr. Gessner identified several options in the staff report. The next step would be to look at how those options work practically and recommend a process to the City Council. One option would be to have a one-time application, but the question is would staff be able to administer that and still maintain good record keeping. The business owner would continue to pay the business registration fee.

Councilor Lancaster suggested streamlining the process by sending out e-mail notices to determine if people are still in business.

Mandatory Recycling Ordinance

Ms. Herrigel updated the City Council on solid waste issues. She noted the City has seven franchised haulers with whom staff is negotiating new agreements as they expire October 2004. Ms. Herrigel discussed the 2002 survey that indicated a 93% satisfaction rate among residential customers and 97% for commercial customers. Upcoming issues include extension of existing franchises to complete negotiations, mandatory recycling, and rate increases requested by the haulers.

Ms. Herrigel recommended that mandatory recycling be reviewed in a general sense from a long-term perspective. How do we maximize recovery in the City and Metro region? Milwaukie haulers currently provide garbage, recycling, and yard debris collection for commercial and residential customers. The haulers are required to provide the opportunity to recycle to all customers. Customers are not required to participate.

She discussed her participation on a regional group called the Contingency Plan Work Group (CPWG) that considered ways to increase recovery in three areas – commercial generators, commercial organic generators, and construction and demolition debris generators. Of the recommendations that came out of the group, the one that impacted Milwaukie the most was the concept of implementing mandatory recycling. One alternative that was discussed at some length was a landfill ban on certain materials. The word “mandatory” and the program itself have generated a lot of consternation over the years. Ms. Herrigel hoped the City Council would allow her to pursue a system similar to the one developed in the City of Portland at least on a research level. She believed that we all have to do something to increase the recovery levels in the region to meet the identified goals. Mandatory recycling does have some merit, and she believed it could be implemented in a way similar to Milwaukie’s code compliance program. In the City of Portland, businesses are required to comply by recycling 50% of their material. It is also the case that they do not have enough staff to ensure that 50% is recycled on a regular basis. In a sense it is voluntary compliance, and only under certain circumstances are there enforcement mechanisms.

Ms Herrigel proposed that she be allowed to pursue a research project in which she would look at Portland’s program, determine how mandatory recycling has worked in other jurisdictions in the country, its effectiveness, and feasibility of instituting a program in Milwaukie. The CPWG went through a concerted, deliberate process, and she felt it was worth researching on the local level.

Mayor Bernard thought it would be very difficult to police this type of program.

Councilor Lancaster observed it was similar to code enforcement. He was not opposed to Ms. Herrigel's looking at what has and has not worked. It is always more beneficial to incentivise or do something on a volunteer basis versus putting the word "mandatory" out there. He was not in favor of that at least on the surface.

Councilor Stone was certainly in favor of the businesses recycling as much as they could. She agreed with Councilor Lancaster in terms of terminology. She thought some kind of incentive would be good. She supported Ms. Herrigel's looking at how other jurisdictions have implemented this kind of program.

Councilor Barnes suggested looking at businesses in Milwaukie that already do a good job of recycling and finding out what prompts them to want to participate. Instead of being top down, it could be business to business. She did not like using the word "mandatory."

Mayor Bernard agreed. He felt the City should look at it, but recycling costs money and takes commitment. He could not imagine policing such a program. He suggested shrinking the size of the garbage cans, enlarging the recycling bins, and letting people figure out what to do.

Ms. Herrigel said the first issue she would consider is how a small community like Milwaukie could staff the program, fund the expense, and help businesses find the space for the additional recycling. Education is the tool that gets the most compliance in this type of program. She understood the Council reacted to using the word "mandatory" and authorized her looking into incentives, education, and researching other jurisdictions on their practices.

Mayor Bernard discussed waste oil recycling program incentives.

Stormwater Master Plan and Rate Discussion

Mr. Shirey and **Ms. Bennett** were the staff members present, and they turned the discussion over to Krista Reininga, URS Corporation, and John Ghilarducci, Financial Consulting Solutions Group, Inc. (FCSG).

Ms. Reininga reported a Stormwater Master Plan was done in 1997 for Milwaukie. It was an appendage to one that was done in Clackamas County and used as a basis although it was rough. The new Plan contains current information on the City's stormwater system. Most of the storm water runs through pipes to Kellogg and Johnson Creeks, the Willamette River, and various drywells that go directly into the ground. There are two main objectives for doing the Plan. The first was to identify where flooding could be expected to happen under a 25-year storm and determine capital projects to address those flooding issues. The second objective was water quality. There are three regulatory requirements relating to water quality, two of which are under the Clean Water Act. The first addresses stormwater management, good housekeeping practices, and capital projects that address water quality. The second is focused on the

CITY COUNCIL WORK SESSION – SEPTEMBER 7, 2004

DRAFT MINUTES

Page 3 of 7

receiving water bodies and measures to meet water quality standards. The third regulation is under the Safe Drinking Water Act and is associated with stormwater going directly into the ground. Drywells located in a two-year time of travel from drinking water wells must be eliminated through capital projects. Focus was on those projects relating to regulatory issues, and 15 capital projects totaling about \$10 million were identified. This list covered flood control for the 25-year storm and compliance with regulatory issues. If any of these projects were eliminated, the City would be out of compliance or could expect flooding problems at these locations. The list was prioritized. Getting rid of the drywells came to \$2 - \$3 million and should be done as soon as possible. Decommissioning the drywells is in a 10-year time frame. The capital projects are scheduled over a 21-year period.

Mr. Ghilarducci said the consultants' role was to provide information on impacts on rates and system development charges (SDC). He talked briefly about utility basics, the current status of the stormwater utility, key assumptions, and preliminary results.

He indicated it was important to remember that utilities are intended to be self-sufficient business enterprises. Rates and charges must be based on the cost of the service provided. One must then carefully distinguish between operating and capital costs. SDC fees may only be spent on capital projects. Rates are for operations and capital. The point is that general city resources should not subsidize utility activities with the idea being the stormwater utility is a self-sufficient business enterprise. The cost of service through rates and charges are capital costs, operating costs, and policy requirements such as minimum reserve balances. For operating costs, the primary and almost only source of revenue is the rates. Capital costs are funded by rates that may fund debt service; SDCs collected at the time of development to help recover the cost of capital and pay for capacity increases in capital; and other options such as grants and developer contributions.

The current stormwater rate is \$6 per equivalent service unit (ESU) and applies to every single-family residence. Commercial customer charges are based on the amount of impervious surface on their parcels. The current SDC is \$473 per ESU. The current stormwater rate of \$6 is expected to generate less than \$1 million in the current budget year against operating expenses of about \$1 million. It is anticipated the fund balance will be drawn down in order to make ends meet in FY 2004 – 2005 for operations. SDC revenues are anticipated to be less than \$20,000 in FY 2004 – 2005 because there is little growth in the City. SDCs are a way to ensure that growth pays its fair share and are not considered a significant way to pay for capital improvements.

Mr. Ghilarducci reviewed the assumptions. These included the addition of 2 FTEs in 2007 and 2009 for a total of \$150,000. Maintenance costs for capital projects will occur after the projects are completed. Growth in the customer base is a little over 1% per year. Potential costs not reflected in the numbers have to do with regulatory requirements for the drywells. He reviewed some potential costs having to do with regulatory requirements for the drywells. The annual cost could be about \$100,000

beginning in the next budget year. This would work out to be an additional \$.60 on the rate per ESU in all scenarios in order to meet the additional \$100,000 needed.

He discussed two basic scenarios implementing the capital plan. One of them was a 12-year implementation that assumed about \$1 million of capital construction. This was run with no debt, and the other assumed the City issues debt every couple of years to spread costs over a longer period of time. Scenarios 3 and 4 looked at doing the mandatory projects within 10 years and spreading the remaining projects over 21 years for about \$500,000. Again, this was run with and without debt.

In scenario 1, the City would undertake the capital plan in 12 years without the use of debt. The rate would more than double by 2006 – 2007, but at the end of those 12 years, all of the costs would have been incurred so the rate would go back down. In scenario 2, when the City gets to the end of the 12-year period, it would still be paying on the accumulation of debt on the projects financed along the way. The rate impacts, however, are much more palatable. Scenario 3 was a 21-year implementation with no debt, and rates just about double by 2008 – 2009. Scenario 4 was 21-years with debt, the rate stays under \$10 by the end of the planning period. In the no-debt scenarios, the rates would theoretically go back down at the end of the implementation periods. The debt scenarios would take longer to go back down because the City would be paying on the debt on the projects.

Councilor Barnes asked for examples of operating expenses.

Mr. Ghilarducci replied operating expenses are ongoing maintenance, administration, field operations, and routine repair and replacement of the system.

Councilor Barnes noted the \$1 million that created the shortfall in 2004 – 2005. What makes up that \$1 million?

Mr. Ghilarducci responded these are budgeted operating expenses, the bulk of which are personnel costs.

Ms. Reininga added the regulatory requirement for cleaning up stormwater has been in place for since 1993. The program requires street sweeping, catch basin cleaning, and other similar activities that are covered in operating costs.

Ms. Rouyer added there is funding for neighborhood projects to correct flooding areas.

Mr. Ghilarducci continued. SDCs are made up two pieces – the reimbursement fee, which is a buy-in to the existing system, and the improvement fee, which buys into capacity-increasing projects yet to be built. The reimbursement fee is calculated on the stormwater assets already in the ground, which in Milwaukie is about \$5.3 million. A little more than 10% of that could be looked at as capacity available for growth and recoverable as part of the SDC. The future piece is about \$10 million as previously discussed. First, existing deficiencies are considered and how much of it is capacity-

increasing to meet the needs of growth. The total SDC per ESU of \$1,177 is legally defensible and is more than two times what the City is currently charging. Additionally, it would be one of the higher SDCs in the Portland metropolitan area. Mr. Ghilarducci provided a chart comparing SDCs and rates of selected cities in Oregon. He discussed regulatory requirements.

Mr. Swanson believed Clackamas County originally established the stormwater program in the early 1990's. Milwaukie's rate began at \$4 per month, and the program has generally been carried out on the cheap. These issues probably account for the largest number of complaints the City gets when it starts raining. Responding to Councilor Barnes's question, Mr. Swanson explained the current fiscal year budget is \$1.8 million of which \$268,000 is for salaries. The City has assumed a lot of responsibility for maintaining stormwater structures that had been laying fallow for many years. Although stormwater issues have historically generated a lot of complaints, the program has been supported on the low side.

Ms. Rouyer added the City is currently analyzing its SDCs, but none have been increased.

Mr. Shirey added staff is scheduled to return to the City Council with separate recommendations for stormwater, water, and sanitary sewer later in the year. Council will be asked to consider rate increases in early October.

Mr. Shirey provided an historical context. If all the City had to worry about was flooding, the job would be relatively simple and less costly. A great deal of progress has been made since Milwaukie put its stormwater program in place. The regulatory requirements in the past 15 years have forced all communities to worry about not only flooding and quantity, but also quality. In the 1950's and 1960's, it was sanitary sewers, and a lot of money went into building treatment plants. Now, the same thing is happening with stormwater, and it needs to be managed. DEQ through the EPA is requiring more stringent monitoring, testing, and reporting that adds to operating costs. Compliance with the Clean Drinking Water Act affects what goes into the ground. The quality side of the picture is an unfunded mandate, and Milwaukie is not alone. This is what drives the need for a fairly substantial increase by one means or another.

Mr. Shirey summarized the Citizens Utility Advisory Board (CUAB) recommendation, which was the 21-year, no-debt approach. He thought it might be appropriate to consider debt to keep the rates a little more manageable. One may argue putting it on a debt basis, then those who participate in the future can also participate in the costs.

Mayor Bernard asked if most jurisdictions were financing these plans.

Mr. Ghilarducci responded there are still some who work on a pay as you go basis, but because they are facing capital projects of some magnitude, some have been turning to debt financing for capital projects. That is becoming more and more common.

Councilor Lancaster thought the 21-year no-debt scenario was a good recommendation. The CUAB has historically given the City Council good advice in terms of representing what citizens want or will tolerate. The City has \$10 million worth of projects just to meet regulations. If we are trying to get business into Milwaukie, the City needs to be able to demonstrate it has reasonable rates with stability over time.

Councilor Barnes understood that position; however her only concern was this is just one piece of the overall utility puzzle. The ratepayers continue to see increases, and she would go with the debt to spread it out. A smaller amount would be better for the average ratepayer when taking their annual income into account.

Councilor Stone did not like the idea of another rate increase. It seemed like just another rate increase for the citizens. She understood there were capital improvement costs, and the City needs to pay attention to its infrastructure. If the City goes with the rate increase, she would be in favor of the no-debt option. She saw, as Councilor Lancaster mentioned, that the rates will not go down, but they surely will not go up for a while.

Councilor Loomis favored the debt scenario.

Mayor Bernard supported the no debt scenario and to pay as you go. The CUAB works hard on these recommendations, so he supported it.

The work session was recessed at 6:25 p.m. to reconvene after the regular session to discuss the outstanding agenda item.

Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL SEPTEMBER 7, 2004

CALL TO ORDER

Mayor Bernard called the 1941st meeting of the Milwaukie City Council to order at 6:30 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster
Councilor Joe Loomis

Councilor Deborah Barnes
Councilor Susan Stone

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Stewart Taylor,
Finance Director
Alice Rouyer,
Community Development and
Public Works Director
Paul Shirey,
Engineering Director

JoAnn Herrigel,
Community Services Director
John Gessner,
Planning Director
Jeff King,
Project Manager
Kelly Somers,
Public Works Operations Director

Brenda Schleining,
Civil Engineer

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Constitution Week Proclamation

Mayor Bernard read a proclamation naming September 17 - 23 as *Constitution Week*.

Mayor's Pinewood Derby

Mayor Bernard recognized Rick Gannon for representing the City of Milwaukie in the recent Mayor's Pinewood Derby.

Advisory Board Interviews

The City Council interviewed **Kathi Schroeder** for a vacant position on the Center/Community Advisory Board, **Terrie Darling** for a vacant position on the Riverfront Board, and **Mike Miller** for a vacant position on the Budget Committee.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Mayor Bernard to consider agenda item 6.B – Agreement with Clackamas Cable Access Board at the October 5, 2004 regular session. Motion passed unanimously.

It was moved by Councilor Barnes and seconded by Mayor Bernard to approve the Consent Agenda that consisted of:

- A. City Council Minutes of August 3, 2004, and**
- B. OLCC Application for Roswell Market, 8929 SE 42nd Avenue, Change of Ownership**

Motion passed unanimously.

AUDIENCE PARTICIPATION

Roger Cornell, 2708 SE Monroe Street, Milwaukie. He cited an article published in 1983 in *Enterprise Courier* that talked about Kellogg Lake and TriMet's proposal to place a transit center on the Lake. It also talked about the City Council's rejection of the proposal. He read a portion of the article, "Just south of Milwaukie, McLoughlin Boulevard traffic roars toward the City limits in an unrelenting din of grinding engines, running tires, and rattling metal. Surprisingly, there is a perfect escape right next to the busy stretch of McLoughlin Boulevard. Kellogg Lake. Hidden by trees that whisk by the car window in a blur, the lake offers a setting reminiscent of Henry David Thoreau's Walden Pond. From the brush and wooded areas around the lake, a visitor can quietly watch various species of water fowl gliding across the water, herons lurking through the swampy grass, beavers tracing networks of watery canals, and hawks surveying the area from the tree tops. The only sign of McLoughlin Boulevard is a barely detected, muffled hum of traffic on the far side of the trees. Mike Houck of the Portland Audubon Society recently studied the site as part of the review process for the TriMet transit center recently rejected by the Milwaukie City Council. As the lake emerges upon approach, Houck immediately begins identifying urban wildlife -- pied bill grebe, redwing blackbirds, mallards he points out. Later we see a kingfisher, pine siskins, mergansers, flickers, widegeons, and a redtail hawk. Houck, who has a bachelor's degree in zoology and a master's degree in biology, explains that the vegetation along the banks of the lake are crucial to wildlife in the area. He notes the dogwood, alder, cattails and spirea that prevail near the lake. Lots of different kinds of plants provide a combination of food and cover and are more desirable than a monoculture of plants, he explains. It's important for urban people to have a natural setting around them, Houck theorizes while scanning the area for wildlife. He praises the psychological value the natural setting in an urban environment." It goes on and on and talks about this site. Mr. Cornell's comment was that it was suggested that the current Kellogg Lake transit center was a bottom-up, citizen-driven recommendation. However, TriMet has had its eye on this site for over 20 years. They do not give up. He believed the difference now was that TriMet

CITY COUNCIL REGULAR SESSION – SEPTEMBER 7, 2004

Draft Minutes

Page 2 of 21

has recruited our City staff and a few citizens and simply re-packaged the transit center recommendation. It was a bad idea then, and the City Council rejected it. He still believed it was a bad idea.

Les Poole, Oak Grove resident, 15115 SE Lee, Milwaukie, 97267. He was pleased to see the City Council place the issue with Happy Valley attempting to, for lack of a better description, steal the tax base from the City of Milwaukie and annex the Town Center while leaving the neighborhoods that are somewhat distressed between our City and Clackamas Town Center for Milwaukie to clean up. There are rumors that the Happy Valley Mayor is behind the plan to shut down Scouters Mountain, so the property can be assimilated by Happy Valley. Mr. Poole was very pleased to see that issue on the agenda. Unfortunately, we have spent so much time with the Kellogg Lake fiasco and because we are in an election cycle, we have not been able to focus on what has been happening with our regional partners. When he made his comments about the Kellogg transit center, one of the big issues he made was that we have alleged regional partners. One of our alleged regional partners is dumping all over us right now. He hoped the City Council would focus strongly on that issue. He was very displeased with Happy Valley, and that was the understatement of the evening. For the record, Happy Valley was formed in 1972 – 1974 as a direct attempt to stop high density and stop Portland from dominating the land that borders Multnomah County. Now that things have changed and Metro has forced high density on Happy Valley, the glorious mayor is way out of line. He appreciated any effort the City Council could make to protect the future of Milwaukie. Protecting the future of Milwaukie also involves protecting green and open spaces. Currently, we are talking about trading the open space at Kellogg Lake for park and open space on the riverfront. At the same time, ODOT has other ideas about the boat ramp. At the same time, we hear from the city manager that we have plenty of park space, and the loss of Kellogg Lake as a park site is just a sacrifice we have to make. He would beg to differ. His question was twofold. Number one, part of the mitigation for Kellogg Lake would involve the riverfront. If the riverfront is paved or turns into a boat ramp, and the riverfront project never takes place, where will we get the green space or open space we are allegedly sacrificing at Kellogg Lake? Are we going to get it at North Clackamas Park? He did not think so because we are talking about ballfields at North Clackamas Park. He did not know enough about the issue to debate it or offer any expertise. He closed with a comment and a question. You may have seen recently the Lents community has foregone the idea of building an ugly, oversized eyesore parking structure for its transit center. It has gone with the concept of building a parking structure that also includes retail and probably some housing which eliminates the natural tendency for transients and undesirables to congregate at a parking center particularly the one located at Kellogg Lake. His final question as a former property owner that had an environmental assessment done on the property he sold to the City of Milwaukie, he was beginning to wonder why we have yet to recommend an assessment on the transit center site. He listened to some comments from the North Clackamas Parks last week, and the District has done an environmental assessment for the baseball fields, and yet nothing has been done at Kellogg Lake. He found that unacceptable. He would like the City to get real and do an assessment on that property.

CITY COUNCIL REGULAR SESSION – SEPTEMBER 7, 2004

Draft Minutes

Page 3 of 21

Ed Zumwalt, 10888 SE 28th Avenue, Milwaukie. Did you hear Roger and Les? Why are they so hooked on nature? Where he came from they used to dynamite the fish, fill them in, machine gun all the wildlife, and then build condos. Let's not waste space with green space. Let's get real. He read a statement into the record. "The Historic Milwaukie NDA is respectfully requesting that Council hire a consultant to evaluate the cost figures and transit routing presented by TriMet in the question of the Kellogg transit center site. At the time of the group vote, TriMet pulled the plug on the ODOT option and pulled it off the table at the last minute leaving only the Kellogg site to vote on. We feel this was patently unfair to the group as a whole and the citizens of Milwaukie in general and should have been objected to vigorously at the time by the City as a matter of ethics to protect the overall interests of the public. In light of the very wide-ranging cost figures presented by TriMet, it is obvious they were confused. Routing, timing, and congestion problems brought up by Roger and Karen Cornell also raise the question of whether the site will even accomplish what TriMet claims. This request is to bring these matters into the open. Anything less will put a shadow on this process that will forever bring its integrity into question. I have been criticized for my remarks to you on 6/21 regarding the process being overly orchestrated and biased. Prominent people have called my remarks inappropriate, and I have been advised to never critique the staff. Why would I deliberately place myself in an adversarial stance with the staff? I wouldn't, but I will not stand idly by and be patronized, patted on the bald head and told 'out of the way old man, we've got this all figured out and you people are just in the way.' And of course I know they have worked hard as they claimed on this whole thing, but what of those of us who have worked so hard for 10 years to keep the bulldozers out of the neighborhoods? And that is what we did. We do not like being patronized. Which begs the question, were Council's instructions to the head of staff focused enough, or have policy liberties been taken permitting a u-turn from Southgate to Kellogg? I don't think those in the general public or many others for that matter expected this development. Everyone's views seem well-represented in this matter – the City, the city manager and staff, Metro, TriMet, ODOT, North Industrial, the Council, but who's missing from this scenario? The 62% of the City's voters who voted light rail down in 1998 and the 56% of the Clackamas County voters who voted it down. That just seems to be the formula, win at the polls and lose in those little deals in the back room. This is not for the people when this is done. And the most important point: it was not about light rail at all, but about livability – keep the trains out of the neighborhoods. Metro knew it; TriMet knew it; they knew there would be trouble by changing the transit site and someone was foolish enough to roll the dice on this one. It ain't cool. It has stirred this town up, and people think it will just blow over. It is not. A deal was broken. If you opt for Kellogg, you are basically disenfranchising all of those voters, and I would think about that very carefully – they put you in those seats. And those voters are still there. Remember the 700-plus petition signers that have been so rudely ignored? Almost every signature was accompanied by the remark "We're with you 100% but it won't do any good, they will put it where they want it." And you consider the apathy? It's because the citizens are treated as nothing, their wishes ignored, until we have this tiny shell of a town ready to crumble away. We want to grow. You have to listen to the folks. In June a couple of you wanted to make this decision right away so Riverfest

CITY COUNCIL REGULAR SESSION – SEPTEMBER 7, 2004

Draft Minutes

Page 4 of 21

would heal the city. Someone tears the stitches out a gapping wound, and you want to heal it with a Band-aid. It ain't gonna happen. This is major serious stuff, and it didn't need to happen. And neighborhood unity. It was great to have it going for us, but you just knew it couldn't last. He did. People sometimes have the need to let their egos or political ambitions get in the way, which is natural enough. It was sad to hear prominent people rejoicing over splintering the neighborhoods. The people who started this should have known better because one of the two backbones of this town is the neighborhoods unified, and that is now gone for a while. And you want to cater to the North Industrial folks? There are only about three that care, and the rest of them would and will dump you in a minute. That area should be changed now while you have this transit opportunity – find some way to make a true industrial park out of it. Your true tax base lies with the residents: livability equals growth equals prosperity. But here they come: Metro, TriMet and now our own city again, pounding away at us with our own money. Turning us into a Beaverton or a Tigard or a 23rd and Burnside. The city manager will retire; the staff will follow their careers; Metro and TriMet will rumble on, conning small towns with their false visions. And most of us will stay, living sadly with our lost opportunities.”

PUBLIC HEARING

A. Tree Cutting Permit at 40th Avenue and King Road

Mayor Bernard called the public hearing on the appeal of the tree cutting permits to order at 7:10 p.m.

The purpose of the hearing was to consider public comment on the issuance of permits TP-04-05 and TP-04-04 associated with the sidewalk project at 40th Avenue and King Road. The applicable standards to be considered were in Municipal Code Chapter 16.32 – Tree Cutting.

Mayor Bernard reviewed the order of business for the hearing.

Conflicts of Interest or Ex Parte Contacts: No conflicts of interest or ex parte contacts were declared. Each member of the City Council had visited the site

Mayor Bernard received numerous phone calls and e-mails. He gave the e-mails to the city recorder. The general substance of these contacts were against the tree removal, looking for alternatives to cutting down the trees, eliminating the parking strip, eliminating as few trees as possible, or not doing the project at all.

Councilor Barnes believed each councilor received e-mail from at least one neighborhood leader stating his opposition to the tree removal.

All the City Council members received communications primarily against the project along the lines stated by the Mayor.

There were no challenges to any Council member's impartiality or ability to participate in the decision.

There were no jurisdictional issues.

Staff Report: **Mr. Gessner** provided the staff report. The initial recommendation was to approve permits TP-04-05 and TP-04-04. Part of that recommendation stands but not for the four trees on King Road. Mr. Gessner provided background on the process. After hearing concerns, the City employed the services of professional arborists and met with the project design engineer. The result was an alternative that solved the tree removal issue. Tree removal regulations provide that notice should be made within 14 days of the City's sending notice to the neighborhood association so that there is time to request a public hearing. The tree cutting was appeal, and the decision was deferred to the City Council. There are a number of trees that are part of the application upon which the City Council will have to act. There is a 30-foot fir tree on 40th Avenue south of Drake Street and some shrubs at 40th Avenue and King Road. The City Council will have to take action on those. The arborists were present to respond to any questions.

Mr. Shirey described the project that would include sidewalks, curbs, and gutters. The City is the applicant for the tree removal as they are located in the public right-of-way. He discussed the extent of the permit. There are a number of trees and shrubs in the right-of-way posted for removal to accommodate the project between Harvey Street and King Road on 40th Avenue and on King Road between 40th and 42nd Avenues. The four fir trees have received a great deal of attention.

Ms. Schleining mentioned for the record that the City held two open houses with detailed construction drawings and photographs of the sidewalk imposed on the property. She did not believe the connection was made at the time until the trees were actually marked. She came on this project after it had been designed, and staff tried to accommodate saving as many trees as possible. On one corner, the sidewalk was actually moved 4-feet to make a curb-tight configuration to accommodate one of the homeowners. One small oak about 1-foot in diameter and some laurel hedges will need to be removed, so they do not interfere with clear sight distance. She did not believe there were any complaints about the fir tree on 40th Avenue near Harvey Street. It has been cut back so many times by PGE, it will never grow to a nice tree. It is probably 3- to 4-feet in diameter. Staff looked at the feasibility of bulbing out the curb by the 4 mature fir trees on King Road and found the curb line could be moved over. Ms. Schleining described the original cross section with two 16-foot travel lanes. The engineer did find a way to narrow it to a 27-foot cross section with one 12-foot travel lane and one 15-foot travel lane.

As an engineer, Ms. Schleining looked at the pros and cons. It is a balancing act and beyond emotion in some areas. These trees are irreplaceable, healthy, and provide habitat. The trees with the bulb-out will act as a traffic calming. On the con side, the intersection will be offset which is not an ideal configuration. The sidewalk

would have to be curb-tight to accommodate the trees and move pedestrians closer to traffic. The 12-foot lane size would be minimal, and 3 – 4 parking spaces would be lost. The engineer indicated the drainage would work, and water should not puddle. The sidewalk would be accommodated with pavers that would have to be maintained by the homeowners or the City as the trees grow. She was concerned that might be a hazard in the future. One homeowner did suggest planting street trees if the firs needed to be removed. This would provide better traffic calming because they would provide a visual canopy of narrowing. Even though everyone does their best, the trees might accidentally be killed during the construction. Removal in the future could damage the new sidewalk and curb and increase the cost. The cost of changing this and reengineering it was about \$2,000, and there is no extra money in this budget.

Mr. Shirey showed an illustration of what could be done to accommodate the trees. He indicated the original sidewalk location and planting strip. The engineer and arborist looked at the feasibility of the bulb out and pushing the curb line out, bringing the sidewalk tight with the curb, and eliminating the planning strip. The trees would exist behind the impervious strip, and instead of pouring concrete pavers would be used. After some investigation on the shallow roots of this tree, it was determined in all likelihood this tree would survive the construction. The engineer indicated there would be sufficient drop to move the water. This was a significant cost advantage to the City because an underground line would have been costly. Mr. Shirey learned from this experience that the tree removal permit was applied for too late, and the community should have been engaged through the neighborhood associations before the trees were marked. The contractor was not provided sufficient direction to avoid excavation up to the drip line of those trees, and the department violated its own procedure. He apologized for what had taken place. He discussed the tree that had been topped by PGE. There has been a fairly consistent chorus of residents who said all the trees are important, but they also recognized there were tradeoffs. In the case of the four fir trees, it made sense to modify the plan, while in other cases it made sense to remove them. The department is already using all available funds

Mayor Bernard said if the trees die because their roots are damaged, then the pavers could be replaced with cement, but the road cannot be adjusted. One tree is further out than the others, and the roots appear to be close to the surface. He understood the tree could be saved.

Mr. Shirey replied that the back of the sidewalk was about one foot from the base of the tree. The arborists did some surface digging and determined it would likely survive. The four trees protect each other, and to remove one would be damaging to the others. Staff recommended taking the risk the tree might not survive. There may be some heaving because of root growth that could lead to future repairs.

Mayor Bernard said pavers are fairly movable and can be adjusted as time goes by.

Mr. Shirey noted that the property owner is responsible for the sidewalk and making repairs if needed.

Councilor Barnes asked what would happen if the City decided not to do the project.

Mr. Shirey replied the City has a grant from the federal government through the County to cover 80% of the project that includes sidewalks, street improvements, and storm drainage. The City would have to return those funds, and the contractor has already begun work.

Councilor Barnes asked if everything could be done with the exception of the sidewalk.

Mr. Shirey did not recommend abandoning the cross section because the purpose of the project was to provide pedestrian access in accordance with the City's standards for neighborhood streets.

Councilor Stone understood the money was given to this project because there were going to be sidewalks on both sides of the street.

Mr. Shirey replied that was correct. The project was designed in accordance with the City's transportation standards.

Councilor Stone wondered if the sidewalk indeed needed to go there and maybe just have something simple like a curb. The Safeway will be on the other side of the street, and that is where one would want the pedestrian traffic. It would certainly keep people from having to cross from north to south on King Road. They would use the sidewalk already on the south side of King Road to get to the shopping center. She asked if that would be feasible.

Ms. Schleining said the curb would actually do the damage. It is about 16-inches deep with an excavation of an additional 6 inches. Leaving the curb and sidewalk off for 40 – 50 feet would be an option. The money could be put into the west side of King Road.

Councilor Stone understood originally the project was to go farther west on King Road.

Mr. Shirey replied that was correct, but because of the high bid costs, the project had to be scaled back. He pointed out that eliminating the curb eliminates drainage. The issue is the curb, and pavers do not require as much excavation to install. The impact to that tree is really 5-1/2 feet back to the curb where the deepest excavation would occur. The arborist was confident in doing it this way the trees would not be adversely affected.

Councilor Stone spoke with several people in the neighborhood about saving these trees, and she certainly supported that. Overall, in the City of Milwaukie, we really ought to have policies in place to preserve trees for any project. Even the tree on the corner of 40th Avenue and Harvey Street, is there anything that could be done to preserve that? Even though it has been topped, it is still a viable living tree. Looking at the picture, it would look quite bare to have the tree removed.

Mr. Shirey said saving that tree would mean acquiring additional right-of-way for sidewalk continuity. He did not recommend stopping the sidewalk and picking it up on the other side of the tree.

Councilor Stone recalled something similar on the Johnson Creek Boulevard project when we went around a tree. She thought as a community, people have spoken loudly and clearly that they want to see trees preserved. When we have projects that involve possible tree removal, the City needs to design the project to accommodate what is already there.

Councilor Loomis asked who would be liable for the sidewalk and what the homeowner's feeling was.

Ms. Schleining said the homeowner spoke with the previous engineer and did not seem to have strong feelings one way or another.

Councilor Stone understood that was correct.

Councilor Loomis asked if there would be an arborist on site during the excavation. He understood if there was not an arborist on hand that insurance companies will not pay on any claims, and the City and homeowner would be liable for damage and removal.

Mr. Shirey ensured Council that the arborists would be on site during the excavation. There was no discussion of thinning the tree. Keeping all four helps protect all of them from blow down.

Councilor Loomis recommended discussing thinning the trees with the arborists because he was concerned about liability.

Councilor Lancaster asked if there was a drainage problem on the tree side of King Road.

Mr. Shirey believed there was some puddling but that information was anecdotal.

Ms. Schleining added there would be an increase of impervious area because 6 feet are being added on both sides. The curb will channel the water for about a block. Even if there were a minor problem now, it would increase if the curb was not installed.

Councilor Lancaster asked if the drainage condition would change if nothing were done on the north side of King Road.

Ms. Schleining said it would probably be negligible.

Councilor Lancaster asked if no sidewalk improvements were done at all on the north side if there would be funding to do the south side of King Road from 40th Avenue to 37th Avenue.

Ms. Schleining said part of that issue would be the drainage. It would have to be calculated on how much stormwater runoff there would be.

Councilor Lancaster said the City has made a conscious choice to put sidewalks on one side and extend it for another block or so. Would it make more sense to do no sidewalk improvements on the north side and have a single sidewalk between 40th and 37th Avenues? Was that doable?

Mr. Shirey said part of the problem was that King Road slopes downhill to the west. A lot of stormwater could be moving at an accelerated rate, and something would have to be done with it at 37th Avenue. There is no place for the runoff. Drywells are not an option because of the proximity to the City wells. The stormwater would have to be piped. The lower end of 37th Avenue does flood, and there is a known drainage issue that would become worse.

Nich Bilyew, certified arborist for 4 years, and **Jeff Gerhardt**, certified arborist for one year with an associate's degree in forestry practicing for five years in arboriculture were available to respond to City Council's questions.

Councilor Loomis had some general questions about the conditions of the tree during excavation. Can you be there to see that the root system is not damaged and if it is, can you tell if the tree will live?

Mr. Bilyew replied he could look at the size of the root cuts being made when the excavation is being done. He would ensure the cuts are proper and clean without tearing. Being on site would not be an issue, but he did not want to be held liable.

Councilor Loomis's understood that if all necessary means were taken to ensure a tree is healthy, then it is simply an act of nature. He asked the arborists their opinions on thinning the trees.

Mr. Gearhart thought it could help but would have to look at the roots to determine what was being cut. The initial shock of cutting the roots should not be followed up quickly with pruning the canopy. It would put additional stress on the tree. He could make further recommendations after observing the cutting of the roots.

Councilor Loomis would appreciate those recommendations. He asked if homeowners are liable for blow downs.

Mr. Firestone said it typically depends on the policy and particular insurer. Generally speaking, if there is any type of property damage, the insurance pays for removal including the tree.

Councilor Lancaster asked the arborists if they had done an assessment on the 40th Avenue tree, and they said they had not.

Councilor Lancaster asked if significant topping typically impairs the life of a tree.

Mr. Bilyew replied that was true. Fir trees are meant to grow with one stalk to the top, so the multiple tops, or attachments, will not be strong. Those trees are not prepared to make support for another leader. Re-topping a tree is safer structurally but lets decay into the trunk.

Councilor Stone asked the approximate ages of the four fir trees.

Mr. Gerhardt estimated the largest one was about 120 – 140 years old, and the smaller ones 60-80 years old.

Correspondence: No additional correspondence beyond the e-mails noted by the Mayor.

Appellant Testimony: **Carlotta Collette**, Chair of the Ardenwald-Johnson Creek Neighborhood Association, 3905 SE Johnson Creek Boulevard, Milwaukie. She noted she found out these trees were in fact in the Lewelling and Hector Campbell neighborhoods, but the Ardenwald Neighborhood had built up its momentum. The neighborhood was pleased to learn of the planning department's recommendation that the permit be denied. These are not young trees that can be replaced in 5-10-20 years or in our lifetimes. These trees are old, and if one drives by, one can see how gorgeous they are. She provided photos of the trees to support the effort to preserve the trees. In a way, we have lost many big trees. Milwaukie has been careful, and previous Councils have been very careful about defining ways to protect trees. She understood the only trees that can be protected currently are in the rights-of-way, and she urged the City Council to help protect them. She was glad to hear there would be process improvements. She spoke with Mr. Shirey at great length over how the neighborhoods would like to see these efforts undertaken. Before putting anything down on paper, before hiring contractors, and before putting money on the table, she urged the City to speak with the neighborhoods. She understood there were two open houses, but there were different engineers with different messages. It was also clear that drawings do not necessarily convey the true outcome. She endorsed Mr. Shirey's suggestion of marking the trees early in the process, so the community can respond. She also took offense at the concept that the ideal street is straight so traffic can zoom through. From a neighborhood

point of view, the ideal street is a lovely tree-lined area that is a park-like entry into the neighborhood that says, “slow down.” An ideal street is one that adapts to the community and is sensitive to the context of the community. It looks like the planning department is trying to do that with the redesign of the street. The neighborhood is excited and appreciative.

Councilor Loomis supported saving every possible tree. All through Milwaukie this issue will come up over and over when sidewalks are constructed. He asked that Ms. Collette, Mary King, and others who are passionate about trees develop an education program for residents and businesses about where trees should be planted. He further suggested a non-profit organization to raise some money so the liability is not on the property owner. He felt uncomfortable putting that burden on the property owner, so he asked Ms. Collette to promote education and cover that liability with a non-profit organization that would step in and help adjust pavers, etc. This is not an isolated incident, and he was happy with this solution.

Ms. Collette commented this was a wonderful problem to have – how to protect the beautiful trees the community does have. She supported the suggestion of a community effort with the schools to create a brochure and let homeowners near these large trees know they have some responsibilities and that there are people who will help them. She believed the neighborhood would happily come out on a weekend to help move pavers.

Councilor Loomis also suggested part of the education be promoting tree planting and describing what trees to plant where. He noted some of the business signs in the downtown are obscured by trees.

Ms. Collette added Metro has some very good publications on green streets that could be distributed locally.

Testimony in support of the appeal: None.

Testimony in opposition to the appeal: None.

Neutral comments on the appeal: None.

Additional staff comments: None.

Appellant Rebuttal: None.

Council questions to staff: None

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 7:55 p.m.

Discussion among Councilmembers: **Mayor Bernard** believed they did a great job with this plan, and the sidewalk and drainage would be a great addition to that area. He discussed undergrounding utilities and tree pruning in the downtown area.

Councilor Lancaster recommended marking trees early in the process to get people's attention. He was in favor of the tree on 40th Avenue coming down because it appears to be a liability. He believed this was a good example of a creative solution and a good compromise. He supported the recommendation fully.

Councilor Loomis and **Mayor Bernard** agreed.

Mr. Firestone said given what he has heard from the Council comments, the Council is ready to uphold the appeal that some trees on King Road should not be removed and the other trees for which the permit was applied for could be removed. The motion should be specific as to which trees go and which trees stay.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to authorize staff to issue the permit to remove those trees located on 40th Avenue at Harvey Street and that the fir trees located at the corner of 40th Avenue and King Road be preserved as indicated in the drawings and that the pine tree and oak tree at the corner of 40th Avenue and King Road be removed.

Councilor Stone commented on the tree at 40th Avenue and Harvey Street. The fact was that we have not even had the arborist look at that tree, and they are speculating it may be diseased. She was not comfortable taking that tree out without a professional opinion and actual assessment of the tree itself.

Motion passed 4 – 1 with the following vote: Mayor Bernard, Councilor Barnes, Councilor Lancaster, and Councilor Loomis aye; Councilor Stone nay.

B. Garbage Rate Increase -- Resolution

Mayor Bernard called the public hearing on the proposed garbage rate increase to order at 8:00 p.m.

The purpose of the hearing was to consider public comment on the proposed increase.

Staff Report: **Ms. Herrigel** noted that relative to the discussion on tree planting that the planning and community services departments developed a brochure during the Centennial Dogwood planting that was available to the public.

The City Council was requested to approve a resolution increasing the residential and commercial rates by 2.79%. The City receives annual financial data from the franchised haulers, and the figures are combined into what is called the consolidated composite. The composite is reviewed to determine the health based on the return

of revenues. The City mirrors the County's policy, which is that if the return on revenue is within a range of 8% - 12% typically no rate change is requested or granted.

In 2003, the haulers showed a rate of return of approximately 10.32%. This year, the haulers have requested an increase not on the reported rate for 2003 but on the expected rate of return for 2004. The request is based on the following anticipated or existing cost increases: the Metro tipping fee has increased by \$3.78/ton and the transaction fee has increased by \$1.50; a 5% increase in yard debris disposal is expected; recycling driver wages are increasing by 5.2% and health insurance is increasing by 9.89%; and fuel expenses are anticipated to increase by 8.5%.

The 2.97% increase requested would help the consolidated rate of return be closer to 10%. Without it, it is expected the rate of return for the haulers would be 7.67%. She referred to the proposed rates. The current rate, for example, for a 20-gallon can is currently \$16.40/month. The proposal is to increase that rate to \$16.86/month. The 32-gallon can is currently \$19.90/month and would increase to \$20.45/month. The 90-gallon roller cart would increase from \$29.90/month to \$30.73. Clackamas County has made similar increases in its rates, and those haulers working in Milwaukie are a subset of the County. Several haulers and their representatives were present if the City Council had any questions of them.

Mayor Bernard asked if the commercial rate would also increase.

Ms. Herrigel said the increase would be across the board for commercial and residential. The last rate increase was July 2003 when the yard debris cart was introduced. In 2001, there was a cost of service balancing by increasing residential rates and decreasing commercial rates. In 1998, both residential and commercial rates were decreased. Before that, the last increase was in 1992.

Correspondence: None.

Audience Testimony: None.

Additional Staff Comments: None.

Questions of Clarification: None.

Close Public Hearing: **Mayor Bernard** closed the public testimony portion of the hearing at 8:05 p.m.

Council Discussion and Decision: **Councilor Lancaster** said from a business perspective, 10% is a very reasonable rate of return. In his experience, residents have received exceptional service from these haulers, and he gladly paid more for his yard debris container. This is a matter of maintaining balance to assure quality

service in the future. He feels the service is exceptional and is an issue of maintaining quality service in the future. He supported the rate increase.

Mayor Bernard noted the recent survey indicated both residential and commercial customers are very happy with their service.

It was moved by Mayor Bernard and seconded by Councilor Lancaster to adopt the resolution adopting new rates for garbage service in the City of Milwaukie effective October 1, 2004. Motion passed unanimously.

RESOLUTION NO. 26-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE ADOPTING NEW RATES FOR GARBAGE SERVICE IN THE CITY EFFECTIVE OCTOBER 1, 2004.

OTHER BUSINESS

A. Jefferson Street Boat Ramp -- Resolution

Ms. Herrigel provided the staff report in which the City Council was requested to consider a resolution authorizing staff to pursue emergency maintenance assistance in the amount of approximately \$10,000 from the Oregon Marine Board for repairs to the Jefferson Street Boat Ramp and directing staff to maintain the current operation and signage pending the granting of these funds.

It was moved by Mayor Bernard and seconded by Councilor Barnes to adopt the resolution authorizing staff to pursue emergency maintenance assistance funding of \$10,000 or less, from the Oregon Marine Board for repairs of the Jefferson Street Boat Ramp and directing staff to maintain the current operation and signage pending the granting of these funds.

Councilor Lancaster asked if the current signage was sufficient.

Mr. Firestone said there is no simple answer to that question. The sign, by itself and if there were nothing else, may not establish anything if the City's liability was at issue. The City Council needs to look at two things – What is right? And what can the City do to protect itself from liability? What is right is the Council's decision. He could not offer an opinion as to the adequacy of the current signage. As to liability, the main thing the City can do to reduce the likelihood of a successful lawsuit is to use its discretion in deciding how to approach this. The City is immune from liability for its discretionary acts. As long as the City Council uses its discretion in deciding what is the best approach, the City should be immune from any lawsuits. This resolution would go a fair way in establishing that the Council did use its discretion in making a decision on the best course of action on a policy matter, so the City should be immune.

Mayor Bernard noted the barricades are still up.

Mr. Swanson said there are additional signs that caution boat ramp users about when to use the south side of the ramp.

Mr. Firestone understood there was also a sign warning the distance to the end of the ramp. The sign and striping have been adjusted to ensure accuracy.

Councilor Barnes commented that she called the state representative to discuss the Marine Board's decision making abilities on payments and terms of contract considering it is a state agency. That state representative said she would step forward in negotiations if needed. It is not cut and dried. The City does have some legislative pull that could be brought in if needed. The state agency does not have to set all the conditions.

Councilor Lancaster understood the Marine Board did an assessment of the ramp.

Ms. Herrigel said the Marine Board did an assessment about two weeks after the incidents. If the City closed the ramp today, there would probably be an obligation to repay on the two grants.

Councilor Lancaster understood the City accepted the liability of the ramp by virtue of accepting the grant. Was it the understanding on the City's part that the ramp would be in good working order until the liability was past?

Mr. Swanson said if the City were to do the same thing today with the same knowledge, we in fact would be accepting the responsibility not knowing exactly when it would fail or what conditions would occur over 20-30 years that would change the safety conditions. When you accept grant money, you also accept the liabilities that occur for the life of that project. The government hands you the money, and they are gone. This is similar to the Marine Board. Once we accepted the grants, we took over responsibility because the City essentially operates the ramp. He guessed somewhere in deep dark recesses of Oregon Administrative Rules there were probably provisions that grants shall be conditioned upon payback after a certain period of time. These agencies do operate under some rules developed by the legislature regarding grants and provisions. Staff will research this.

Councilor Lancaster asked the question because he had a problem with need to close the ramp for safety and yet being held financially liable for doing the right thing because it was not constructed well enough to last as long as it should. If we acquire more money, does that add to liability account?

Ms. Herrigel understood the City would be under no obligation to repay the emergency funds. It could be that after the assessment that \$10,000 would not be sufficient to repair the ramp to a better standard. She was requesting the

opportunity to pursue this with the Marine Board without necessarily committing the City. The application fee is for an in-water work permit. The City would pay the fee, but the Board would take care of the paper work. Ms. Herrigel did not know why the fee was not included but would ask.

Councilor Lancaster asked at what level the North Clackamas Parks and Recreation District (NCPRD) was involved.

Ms. Herrigel replied the District was effective in getting the Marine Board for the original assessment the day after the incidents. The District knew how to make it happen quickly because of work done relating to other boat ramps. NCPRD does not have a monetary stake in it, but she could discuss that issue with them. Ms. Herrigel stated she was working on scheduling the work session with the Marine Board.

Motion passed unanimously.

RESOLUTION NO. 27-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING STAFF TO PURSUE MAINTENANCE ASSISTANCE FUNDING OF \$10,000 OR LESS FROM THE OREGON MARINE BOARD FOR THE REPAIR OF THE JEFFERSON STREET BOAT RAMP.

B. Agreement with Clackamas Cable Access Board

This item was continued to October 5, 2004.

C. Authorization and Resolution to Submit a Transportation Enhancement Program Grant Application

Mr. King provided the staff report in which the City Council was requested to authorize staff to proceed with the grant application and adopt a resolution that agrees to providing a 10.27% match if the grant is awarded. This grant would be for streetscape improvements for the public areas that would connect the McLoughlin Boulevard improvements, North Main project, and city hall. The grant is for \$654,500 in fiscal year 2007 – 2008. The application is due September 10, 2004 and the resolution is part of the process that indicates the governing body's support.

It was moved by Councilor Barnes and seconded by Councilor Lancaster to authorize staff to proceed with the grant application and adopt the resolution supporting the application City matching funds. Motion passed unanimously.

RESOLUTION NO. 28-2004:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, SUPPORTING A REQUEST FOR FUNDS TO THE OREGON DEPARTMENT OF TRANSPORTATION UNDER THE TRANSPORTATION ENHANCEMENT 2007 – 2008 PROGRAM FOR CERTAIN SIDEWALK AND STREETScape IMPROVEMENTS IN THE DOWNTOWN.

D. Special Public Works Fund Loan Application for Right-of-Way Infrastructure Improvements Related to the North Main Redevelopment Project and City Hall

Mr. King provided the staff report in which the City Council was requested to authorize the Mayor to sign a loan application in the amount of \$738,000 for right-of-way, sidewalk, traffic and streetscape improvements to support the North Main Redevelopment Project. The loan could be amortized over 20 years for improvements directly related to the North Main Project, Harrison Street, and City Hall utility undergrounding required by PGE. It would also pick up the streetscape improvements and sidewalks pursuant to the public areas improvement plan. It would include treatments at Main and Harrison Streets and 21st Avenue and Harrison Street. The Oregon Economic and Community Development Department (OECCD) would make the award followed by a contract and public hearing regarding the actual loan obligation. The award could be as early as two months from now. A portion of the award could be used for engineering. The interest would be about \$56,000 - \$58,000 annually. Staff has an idea of the costs based on the work done on Jefferson Street.

Mayor Bernard understood the church paid for part of the Jefferson Street project, and this would be part of the partnership with the private developer.

Councilor Lancaster asked when the payments would begin.

Mr. King said payments would likely begin in 2006 and be amortized over 20 years.

Councilor Lancaster asked where the payments would come from.

Mr. Swanson indicated the payments would likely come out of the general fund.

Mr. King explained the developer was expected to purchase the community incentive loan, so if the timing is right, that one will be gone before this one started.

Councilor Stone asked about the term of the loan. Was there some reason the City went for 20 years?

Mr. King said it could be shorter. Regulations allow for this type of capital infrastructure loan for up to 20 years. Once the award is made, then the

negotiations begin at which time these issues will be discussed. The state does the underwriting, and the City can take advantage of its bond rating.

It was moved by Councilor Barnes and seconded by Councilor Lancaster to authorize the Mayor to sign a \$738,000 loan application to the Oregon Economic Development and Community Development Department to support the North Main Redevelopment Project. Motion passed unanimously.

Annexation

Mr. Swanson discussed the last item on the work session agenda. He clarified this did not appear on the agenda in response to anything that occurred because of the statements made by the Happy Valley Mayor. He has been wrestling for a long time with the issue of annexation. All too often cities propose annexation for one reason, and that is to ensure financial stability of the city as it currently stands. While a noble cause, the effect of annexation is to change the city and to bring in new properties, businesses, and citizens. He always believed there was another aspect to annexation. Those who look at annexation as a financial fix ignore the ability to provide services. If one is not ready or able to provide service, then there is a disservice to those being annexed and the city that is currently being served. Rather than this being a way to fund a fancy new concept of a city hall or office building, this is about this City's ability to provide services.

The Town Center has always been seen as a plum probably because of its status as an economic engine in that area. The value is somewhat suppressed by the tax increment finance district. It is important because of what it means as an institution in this area. He came to the conclusion about a month or two ago that the City is ready from a service provision perspective. He does not have enough police to serve the City and the Town Center. He has 29 sworn officers which is not enough. He does have a police department with the values and operating principles in place because of Chief Kanzler, officers, and staff of that department. They are ready to take on bigger challenges. He has a planning department and building department that are also ready. He cannot ask John Gessner to take on that kind of responsibility, but if he can provide the funding, they are capable of it from a professional point of view. He has professional departments. That is the first piece that needs to be in place. Once that is in place, then it becomes a question of finances. Can it be supported? That is the next step. Are we able, looking at an annexation strategy, to support the level of services we believe professionals provide?

Mr. Swanson asked for authority to move to the next step and begin to truly get a handle on the costs involved. He also believed annexation was not only a game of picking only the good. You have to take the good and the not so rich. There are areas that are not probably as well situated as the Town Center. He wanted to take the next step of looking at the costs and develop a strategy if the costs in fact bear out the ability to provide professional services. He met with the general manager of the Town Center last week who will work with the City of Milwaukie and talk with the people in Chicago.

CITY COUNCIL REGULAR SESSION – SEPTEMBER 7, 2004

Draft Minutes

Page 19 of 21

He wanted to make sure the general manager had this staff memo in advance, so he would know what the City was doing. Both agreed to keep in touch so no one was blind-sided.

Mayor Bernard commented in November 2002, there was an annexation study with Clackamas County and Portland State University that indicated there was benefit to both parties in Milwaukie's annexing that area. There are also areas along Johnson Creek Boulevard that need to be annexed because of environmental issues, and he is constantly asked which police department to contact. Taking the cream off the top and leaving the hard stuff for Milwaukie is not what should be done. He looked forward to working with others because Milwaukie has many things to offer that the County cannot. The City can offer great customer service.

Councilor Lancaster said annexation is the next step in the progression. He believed local governments have a moral obligation to work together to provide the best possible services and not enter into capricious land grabs. It is easy to see, that area is part of Milwaukie's urban reserves. The City is best positioned not only because of its organizational values and resources but also by any other measure to be the service provider if given cooperation. He felt the City should move forward and not get caught up in overextending overtures by those who have special interests.

Councilor Stone asked when there would be a report available on expenditures and revenues.

Mr. Swanson said it would likely be a couple of months. He knows who the property owners are, but he may want to take it down to the level of tax lots. His general reaction is that there is sufficient value to provide those services. Milwaukie will not realize a net gain but will be able to meet its responsibilities. The Town Center does not need an office with a sworn officer that is in the field elsewhere most of the time. It needs police officers on site and needs a higher level than it is currently receiving. The strategy is the harder part. Town Center ownership is divided between many different parties, so talking to one does not ensure the consent of the others. The strategy is how to get from here to there. If the City uses the existing park property, then it is important to keep Clackamas County as a partner. Milwaukie cannot assume those infrastructure needs on Harmony Road. There is a wealth of issues, and money is probably the easiest.

E. Executive Session

Mayor Bernard announced the City Council would meet in executive session pursuant to ORS 192.660(2)(e) – real property transaction.

ADJOURNMENT

It was moved by Councilor Barnes seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the regular session at 8:45 p.m.

Pat DuVal, Recorder

MINUTES

MILWAUKIE CITY COUNCIL SEPTEMBER 21, 2004

CALL TO ORDER

Mayor Bernard called the 1942nd meeting of the Milwaukie City Council to order at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Council President Larry Lancaster
Councilor Joe Loomis

Councilor Deborah Barnes
Councilor Susan Stone

Staff present:

Mike Swanson,
City Manager
Gary Firestone,
City Attorney
Stewart Taylor,
Finance Director
Alice Rouyer,
Community Development and
Public Works Director
JoAnn Herrigel,
Community Services Director

Paul Shirey,
Engineering Director
Jason Wachs,
Program Coordinator
Grady Wheeler,
Information Coordinator
Lindsey Nesbitt,
Associate Planner

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

Mayor Bernard announced that this was **Richard Beck's** last meeting and thanked him for his almost 20 years of videotaping Milwaukie City Council sessions and special events.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Stone to approve the Consent Agenda.

- A. On-Call Engineering Services Award, and
- B. Hill Street Sewer Contract Award.

Motion passed unanimously.

AUDIENCE PARTICIPATION

Kristy LaBianca, Kellogg Lake Apartments, 12200 SE McLoughlin Boulevard, Milwaukie. She recently found out that she could speak at this meeting. She had no degrees that would qualify her to speak to these issues or any previous experience. She did have a heartfelt testimony. She ran into Kellogg Lake Apartments about 5 years ago as a property management professional. She was in awe that such a place would still exist. Recently a position opened up, and she was fortunate enough have the ability to move in, work there, and serve the residents. It has been a life-changing experience for her and her daughter. They wake up in the morning and see a blue heron fishing for breakfast. They see all of the little furry creatures and the sweet people here in Milwaukie. Yet, because it is a crazy world, she is thankful the lake provides a natural barrier for everyone who lives there from those things that happen on the street. A few weeks ago she heard people had seen a big eagle flying and sitting in the parking lot. What a marvelous symbol to have in this day and age. She looked out the office window, and there sat a baby eagle. He let her walk up to it and talk to it. He did not want to fly and just hopped around. They talked for a long time, and he let her take pictures of him. She could not imagine the few places on earth where anyone can live like this, and the many places in Milwaukie one could have a transit center. Why on earth we would even consider changing anything at all about Kellogg Lake? She could not image anything more important in a world that has gone sideways than preserving something that is special.

PUBLIC HEARING

Transit Center Relocation Deliberations

Mayor Bernard said having heard testimony on this matter, now was the time for City Council deliberation.

Councilor Stone provided her remarks in a prepared statement. She wanted to say thank you to all of the citizens who participated in the testimony both for the site and against the site. She wanted people to know she was compelled by it all. On May 18 when the testimony opened and she heard the support for Kellogg Lake, she thought to herself the opposition would have to have its ducks in a row to withstand that. She thought they made some good points. The opposition came along the following week, and their testimony convinced her they were going down a road they should not be going down. Like Kristy said, why would we want to destroy something so special?

Councilor Stone read her comments. Tonight, we as members of your Council find ourselves faced with the challenge of examining the Planning Commission's recommendation for the 2.5 Kellogg Creek option. An option that would seem to more closely satisfy the needs of our regional partners at the expense of violating community values – values that define what is important to the people who live here. Values that our mission statement reads as having a commitment to achieving and maintaining the sense of place, history, and future that defines Milwaukie and distinguishes it from other

areas. A livable safe environment including preservation and enhancement of both built and physical environments. Can we as a Council with good conscience turn away from community values in pursuit of a regional plan? It would seem that it is all about building light rail and leveraging federal dollars to support its outcome. How did we come this far in a process that time and again was overwhelmingly defeated in the polls? Regional agendas and the personnel who create them would seem to be more important than the people who pay the taxes that fund these idealistic notions. Where has it gone wrong? What has happened to our core value system that we would even consider much less use a riparian environment to construct a steel and concrete monstrosity? How easy it seems to simply change zoning laws to make something happen contrary to its intended use. It could appear that rules are bent quite easily for things our regional partners and staff want to see happen in our town. Of course there is an answer to everything; it is called mitigation. Sure this plan will work they say as we peruse down the laundry list of potential and actual problems that will all be solved with a wave of a magical mitigation wand. With enough of our money anything can happen. She wondered how those pushing this agenda would feel if it were they that occupied the Monroe Sweetland home or any of the homes on Kellogg Lake that would be negatively impacted with this abysmal idea. As the public testimony for this proposed site came to a close, she was struck by the determination of people in this community as they testified over and over that they do not want this 2-acre parcel of land utilized for anything other than the green space it was intended to be as documented in our Downtown and Riverfront Land Use Framework and Comprehensive Plans. How can we as a Council turn our backs on such testimony and ignore the overwhelming opposition and the 750 signatures on a petition to keep the proposed transit center off the Kellogg Creek site? How can we as a City ignore the factual testimony by Roger and Karen Cornell as to the transportation and operations pitfalls of this option?

The following were her concerns about this option. The charge of the working group was to mitigate and minimize the impacts of the proposed Southgate transit center site, not to change its location. The decision to place the transit center at Southgate was a result of a lengthy process involving public input over several years, but the decision to place the transit center at Kellogg Lake was result of literally a handful of meetings of the Working Group and an open house. The rapidity at which this decision was birthed can lead one to suspect it was a calculated and orchestrated event. At the time the Working Group was convening was it ever on the table that TriMet was purchasing the Southgate site for a potential park-and-ride? She had concerns the membership of this Working Group did not seem as balanced in terms of residents versus business owners as she would have liked to have seen. The business owners made contact with the City claiming they did not have input into the current LPA [locally preferred alternative] which drove the forming of the Working Group to minimize impacts to their businesses. However, rather than receiving a recommendation from the Working Group on how to minimize impacts, we have an altogether new site proposal from the Planning Commission on the table – Kellogg Lake. Some of those Planning Commission members are second-guessing their decision to support the site and have even resigned from their seat on the Commission as a result of it. As a member of City

Council she looks to commissions and boards for recommendations based researched and factual information to guide decision making at the City Council level. To have a Planning Commission divided in its recommendation to the Council speaks to the misguided plan to site a transit center at Kellogg Lake. She fully understood the business owners' concerns and certainly does not want to arbitrarily displace anyone. The question needs to be asked, do we have factual numbers in terms of traffic studies to justify concerns by business owners that a transit center could not work at the Southgate location? She had to wonder if we so willingly bent over backwards to the business owners' concerns and in fact proposed to move the transit center site to another part of town, why in all fairness would we not afford our property owners, our taxpaying citizens the same consideration? In terms of future connectivity to I-205, a northern site for the transit center at the Southgate or even ODOT sites seems more logical from a transportation point of view than the Kellogg site at south end of our City.

Another concern she had was the plan to use an existing Greenspace for the purpose of a regional transit center/park-and-ride. It is in direct conflict with our Milwaukie Downtown and Riverfront Land Use Framework Plan and the Comprehensive Plan. These plans are meant to be a map to guide us in planning our future. And, yes, they are not necessarily rigid in order to accommodate changes in our ability to execute sound ideas that enhance the quality of life in Milwaukie. However, as we adjust these plans, we must always be mindful of the basic philosophy that is the substance from which they were born. The Comprehensive Plan states it is fundamentally a guide to the physical development of the City. It is the translation and reflection of the community's social and economic values into a scheme that describes where to build, what to preserve and conserve, and where to rebuild and how to redirect growth. The Plan speaks to the preservation of open space throughout the document. To go in a contrary direction so as to reap the short-term benefits of federal dollars all the while sacrificing a most valuable we possess is unconscionable.

She read an excerpt from Milwaukie's Comprehensive Plan. "Existing natural resources and developments of character will be preserved. New development will contribute to improving the quality of the living environment and to a sense of citywide identity and pride." How does the erection of a multi-story parking structure improve the quality of life for anyone? Be it the people in the community or the wildlife at Kellogg Lake. It goes on to say the wise use and management of the remaining natural resources of land, air, and the natural environment is particularly important in Milwaukie because the City is almost completely developed and few areas remain in a natural state. The protection of these natural resources is essential if residents are to experience the pleasures and amenities, which can only be enjoyed when nature is close at hand. One of the goal statements from this Plan reads, "to preserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment while preserving and enhancing significant natural resources. The Comprehensive Plan has designated areas along Kellogg Lake and Kellogg Creek to be of special importance to all City residents." The Plan goes on to say the preservation of these natural areas and improved public access to the riverfront are important neighborhood objectives. The idea of using precious Greenspace for regional transit

purposes would absolutely never see fruition across the river in Lake Oswego because in Lake Oswego people and property are protected from the onslaught of urban growth. Lake front property is determined to be of value there. One of the so-called positive effects of moving the transit to Kellogg Lake is that it would eliminate an eyesore in downtown Milwaukie. She had to ask why a perceived eyesore in our downtown would not also be a perceived eyesore on Kellogg Lake?

The City holds approximately 78 acres of park and open space land. According to the Comprehensive Plan there are 50 acres of public school grounds and 150 acres of privately-owned natural areas totaling 278 acres. Some of this will diminish as property develops under City regulations. The Plan goes on to state that typically public open space standards for a population of 20,000 suggests over 450 acres should be available. As we currently claim 78 acres in our holdings, we fall miserably short of what we need. If we allow a designated Greenspace, a place that infuses peace and tranquility into our daily lives, to be taken for regional use, then we have failed not only as people but also as a community. Move the transit center north to either the ODOT or Southgate sites and let Kellogg Lake remain as a Greenspace for all Milwaukie citizens to enjoy. There is no legacy in leaving behind for future generations a gargantuan and grotesque edifice of molten metal and concrete. Let our values and what we hold to be precious guide our decision -- not the pursuit of money.

We have been given many reasons to anoint the 2.5 Kellogg Lake alternative not the least of which is to say this decision has a direct impact on our reputation among our regional partners and development community. That we will be looked upon as being inconsistent and not being committed to carrying through ideas. That if this plan fails to go forward, the probability that we could ever convene a group of people together again to collaborate on a future plan would likely never happen. She said, hogwash. Grasping at straws so as to persuade those who make policy decisions. This community has a lot of dedicated citizens willing to invest their time to help in the implementation of a vision we can all embrace for generations to come. She was actively involved in this City for 11 years and continues to be part of the dynamics that are shaping its future. That there could never be another group of people committed to solving problems on contentious issues is unfounded. It is precisely through engaging diverse backgrounds and opinions that we come to the best solutions for long-range planning in the City.

What she does not see happening here and what she would like to see happening here at the staff level is the collaboration with citizens that presented researched and factual data in opposition to the Kellogg site and specifically the research that went into the awesome PowerPoint presentation given by Roger and Karen Cornell. To not have staff engaging them in a collaborative manner and working toward a solution for the transit center site let alone not even acknowledging their facts and background in transportation analysis is wrong. Her concern is that if we do not acknowledge citizen's factual data and work with them, we miss an opportunity to find better solutions for the dilemmas we face for planning for the future of our City. It has also been said that regional partners hold the key to funding, and the development community holds the

key to development that is needed for this City to achieve financial stability. While that may be true, she would say that we hold the key to our City, and we are not allowing anyone in who does not have our best interest at heart. We hold the key to shaping our community in such a way as to make Milwaukie the next sought after place to live in this region. Protecting your open space speaks a clear message to any potential homebuyer that we value our assets. Let us focus on finding ways to enable and encourage our citizens to make financial investments to their property so as to raise our standard of living and our tax base thereby revitalize our City and our budget.

Milwaukie could be the newest jewel in the regional crown if we plan wisely. Recently, the Milwaukie City staff not only listened to citizen concerns regarding saving four very old fir trees on 40th and King, but they acted upon them by consulting with certified arborists and developing new design plan for the proposed sidewalk that would save the trees. The Council concurred with this design. They showed they cared about what is important to the people who elected them into office. What a fine example of collaboration to find an alternative that accomplishes the goal while addressing a core value of the community – the preservation of our environment. Just last week, the North Clackamas Parks and Recreation District voted to delay the decision on a proposed sport field complex at North Clackamas Park. Citizens raised concerns about increased traffic, noise, and lighting. The District listened to these concerns and decided consultants were needed to study the financial and engineering impact and overall design before a decision can be reached. On Kellogg Lake we have not even done an environmental study to see if it is even feasible. Citizen driven concerns that impacted the course of those who spend our hard-earned tax dollars. How is it that four grand old fir trees and a proposal for playing fields would generate enough support to cause policy makers to immediately put on the brakes and change the course of action? On the other hand, the proposed transit center at Kellogg Lake – a decision of much greater magnitude with far greater negative impacts reaching into our future – does not seem to register so much as a bleep on the political radar screen for some. Do we as a Council as a City care that literally hundreds, hundreds of citizens oppose this option? That fact in itself speak loud and clear to her that we are barking up the wrong tree. We as a Council cannot ignore the overwhelming opposition to building a transit center on the Kellogg Lake site. To do so would not be representative of those that elected us to office. In the words of former Mayor Bill Hupp during the public testimony on this issue, he stated, “When I was on City Council and an issue came up where I had to choose between the bureaucracy and the people, I always voted for the people.” If we truly care about our community values and the citizens who overwhelmingly oppose the transit center at Kellogg Lake, then we must as a Council provide leadership in regional decision making that enhances rather than extorts our community.

Councilor Loomis commented everyone that was in the Working Group agreed that Southgate would not work. The Tillamook line was the agreed upon choice. He had a different perspective. He thanked everyone for his or her input during this process. It helped him come to a decision. It challenged him all the way through on his decision. He chuckled when Ed said in his testimony that when gathering the signatures people would say, “they want to do what?” That was his first impression when he heard the

Working Group decided to move the transit center to Kellogg Lake. He approached it with one of the strengths he brings to the Council, which is an open mind. He listened to the testimony, and respects the process if it is open, fair, and everyone's opinions and thoughts are considered respectfully. Then he felt a duty to uphold the process. The Working Group overwhelmingly supported the 2.5 option. The Planning Commission overwhelmingly supported it. Staff supported it. We as a Council have discussions once a year about supporting staff and retaining staff and keeping people here, so we give them a 3% raise when we don't have any money. He always argues that it is more than money to keep good people working for you. It is supporting them when you ask them to do a job. This Council asked them to do a job, and they went out and did it. And if there is no visible reason to go against their decision, it should be supported. That is why he was at his decision. As he looked at the proposal, the benefits outweighed the negatives in his opinion. He came on the Council when the LPA was approved. He heard discussions about this being a long time – 3 to 4 years – getting here. When Roger brought up the 1983 *Enterprise Courier* article, staff had given the Council some old memos and minutes. The City has been trying to move this transit center since 1980. Twenty-four years is a long enough time to make a decision on this. There are negative impacts. People do not like the word mitigation, but all of them can be mitigated. The one he had the most trouble with was the impact to the neighbors living on the lake. There is no doubt they will be negatively impacted. There is no way to get around that. In talking with some of the neighbors, they would prefer a park or even housing. In his mind that land will not stay what it is forever. Through this process there is mitigation to protect the wildlife. If can't be done, it won't be done. This is the first step of that process. The neighbors would be impacted with a park. Whatever goes there will be a negative impact and something different than what they have now. When visiting one of the neighbors, one of the Kellogg koi was jumping in the lake. It is a serene and beautiful area. He has known that forever. At the same time, a high school student crosses the trestle as a way to get across McLoughlin Boulevard. This is where you are torn. There is the need for safety improvements connecting us to the riverfront. We have talked about the improvements, but in the future all of the improvements we have touched on -- fixing the dangerous intersection that the Island Station has wanted for years -- will be fixed. The pedestrian bridge implemented and a parking garage that will help bring people to this town when we have festivals at the riverfront. It will help to keep people out of the neighborhoods. A transportation system – he went to the ODOT site, and to him it does not work. It does not work for TriMet, and in his opinion, it does not work for Milwaukie. It is too close to Goodwill. If we are going to have a transportation system in the future, it needs to come to our town. He read an article from The Oregonian, "At 70 I am trying to imagine how I keep my independence – live my own life without a drivers license. Like other older folks, I know the high stakes. For many that plastic rectangle means the difference between assisted care and keeping our homes. Between crushing isolation and a satisfying social life. In two years, the first of the baby boomers will be sixty. By the year 2010, 1/5 of our population will be 60 or disabled." There is going to be this growing need, whatever your opinion is of light rail or public transportation, the need is only going to grow. Traffic complaints are going to happen whether this is built or not. You realize that by driving around every day. Traffic is worse and worse and worse.

CITY COUNCIL REGULAR SESSION – SEPTEMBER 21, 2004

DRAFT MINUTES

Page 7 of 33

Maybe out of this we can mitigate the traffic problems in the Historic and Ardenwald neighborhoods. He thought this was a good thing. After hearing about it and having negative thoughts, and listening and talking to folks, he believed this would be something the City needs. It will be a benefit. There will be growth in the future around this, and he thought with the trails and levels of activity, this will be a place people will want to live. It could be a senior type of deal, and the housing will be key. He said he would support the recommendation.

Mayor Bernard thanked everyone for participating. He was involved in the process throughout. He attended some of the North Industrial meetings to listen, look at the maps, and hear some of the concerns those businesses had with the Southgate park-and-ride or the transit center. The most important thing he saw in that site was that the loss of jobs would be tremendous. Some of those businesses have been here longer than some of Milwaukie's citizens. Some are leaving but others are already considering those sites for redevelopment. Today he and Councilor Barnes and a number of downtown business leaders met to talk about Milwaukie's future and its potential. They talked about what some of the businesses do in that area. One of those businesses distributes Tootsie Rolls to all of Alaska on Halloween. There are many businesses that provide services and supplies throughout the world that come out of the North Industrial area. Maybe it is an ugly looking area, but they are actually talking about changing the face of the area to make it look more respectable or draw more businesses into that area. At one point it was nearly vacant. It is starting to change. Bob's Red Mill has leased a large facility in the North Industrial area. A printing company has taken over the Mailwell property and is growing and anticipates huge growth. We are actually out there pursuing those businesses that are considering that site.

Mayor Bernard said most of all this is just the first stage. We have not looked at any of these issues, and why should we? We should not spend a dime unless we at least consider the site. Look at environmental impacts. The Southgate site showed negative impacts on the industrial development, truck access, and jobs. Harder Mechanical just invested a lot of money in its building, and it is growing. These are high paying jobs. We need to consider that. Jobs are important. Maybe you do not work down there, but there are people who do. Those businesses own the buildings and the properties. They pay payroll taxes and property taxes. All of those things the City depends on. We have not done any specific analysis of the Kellogg Lake transit site of any kind. Until we have more information on that site, we do not know what the traffic impacts will be on the neighborhood. We have talked about relocating the transit center for over 2 decades. This issue reminds him a lot of Johnson Creek Boulevard, which took over 15 years to finalize. Is everyone happy with the results of the Johnson Creek Boulevard? No they are not. Is it safer? Yes. Does it provide better public access? Yes, it does. Do the houses still shake? He did not think so. Is it a project we can be proud of? He believed that we could. Did we work hard to address as many of the neighborhood concerns as possible? Yes, we did. He made some assumptions, and until Metro and TriMet spend some money analyzing the Kellogg site, he believed the site would reduce the traffic impact in the Historic Milwaukie neighborhood -- and on Lake Road, Washington Street, Monroe Street, Harrison Street. We will not know until we spend

some time and money on analyzing that transit center. He drives Lake Road daily. It gets worse every day. It takes him 10 15 minutes to get a mile to his home when the traffic is backed up all over the place.

We can restore the banks of Kellogg Lake and provide access to the lake for all citizens. Someone dropped off some pictures of Kellogg Lake when they used to have canoeing on the lake with a pier. He suggested making that one of the requirements of the transit center – that maybe they build a pier out into the lake and provide access for canoers and others who want to look at the wetlands. That lake is not the same lake when he was a kid fishing for crawdads and trout and walking along the banks. There is a huge apartment building that was built in the 1980's. That has already impacted Kellogg Lake. That development was considered in the early 1980's and finally built in 1989. The eagles are still landing there. This site can accommodate eagles and anything else. While he does not know that for sure, we cannot know until we spend some time and money studying that. He would not support this site in the future until these things are mitigated or we decide this is not the site.

This is a first stage. We may find out in the next few months that it is so packed full of refrigerators and Freon and waste oil cans that we cannot proceed any further. It may not even be safe for a baseball field, but who knows until we take the time and money to look at it. The Island Station neighborhood supports this transit center. It offers an opportunity for sidewalks and River Road access improvements. That is one scary site. The house that used to be owned by Monroe Sweetland certainly was impacted more greatly by apartments next to it than this facility will ever cause. It is a good distance away. He believed the security would be provided with the help of the police chief to protect that neighborhood and that community. This is a long way off. We need to make sure some of the lessons learned by other transit authorities in Hillsboro and Beaverton are utilized in the development of this site. The transit center will be moved from the downtown. You can hardly park downtown. People using the parking spots all over the City. The businesses spend half their days moving their cars down the street so they don't get tickets. This can provide that opportunity. There is a lot of opportunity here. We can negotiate with TriMet to provide adequate security. The parking lot across from City Hall is part of this plan. He runs the Farmers Market every Sunday. The tree roots are popping up out of the blacktop. The electrical system is buried in the ground, and his group paid \$4,000 this winter to repair the electricity. There is a great opportunity to fix that parking lot and make it a great facility. We can make it part of the plan -- laying in some brick and improving access to trucks who unload their goods. It is a great opportunity. If you do not go to the Farmers Market every Sunday you should. He listens to people's concerns. He has heard we are filling in the lake. He has heard we are building a transit center on the Willamette River. What do people think we are doing? We are looking at a site that has been sitting there for as long as he can remember. Apparently, it was a landfill at one time. If you do not think that affected Kellogg Lake, you are wrong. It amazes him that anyone would have been allowed to have a landfill there. It did happen, and it does exist. This is only a recommendation to study the site – create a study group to analyze the site impact that will involve citizens and business leaders and the City Council. This issue has divided and damaged this

CITY COUNCIL REGULAR SESSION – SEPTEMBER 21, 2004

DRAFT MINUTES

Page 9 of 33

community. He felt we were at a stage when we were really moving. We had so much potential. He thought this has really hurt this community. We have a staff that has done a fantastic job of working with all those concerned. We have listened to the community. He has listened to the community. He sat at the Farmers Market, and the door at his business is open all the time. People tell him about the history of Milwaukie and how they spent all their time on that lake. That is true and he appreciates that because he did too.

Some may not like the answers that come up in the end, and no matter how good they are, some will never trust the results. Our job as City Councilors is to look to the next 100 years. We have been around for 100 years and gone through a lot of changes. We put a sewage treatment plant on the Willamette River. Why that was ever done, he did not know. He did not think this was the same issue. This is an opportunity to perhaps facilitate removal of the treatment plant and to facilitate the growth of the riverfront park. We have a responsibility to our future residents to provide great public transportation and stable City government, and that requires some risks. He struggles with this every day. He has gone back and forth every day. It is a tough decision, but tonight he would vote in favor of further study. If the study comes out that this will no work, he will be along side others to move it somewhere else. He thought the Park Avenue and McLoughlin Boulevard site should be considered, but he understood it would be \$50 million to go that short distance. He thought TriMet should look at it to determine if the ridership was there. We need to spend some time on this and find out if it is possible. He met with Councilor Lancaster, and they looked at a proposal that a community member brought the City Council. He thought it was a great idea, but it has even more negative impacts on the neighborhood than the Kellogg site. He personally believed the Tacoma and Kellogg sites would do two things. He would go to the transit center off Hwy. 224 and go to Tacoma. If he lived in Oak Grove, Gladstone or Oregon City, he would drive McLoughlin Boulevard and hit either Kellogg Lake or hop on Hwy. 224 to get to Tacoma. Either site, he believed, would reduce traffic impact in the City, but he would not know that for sure until we do a study. We should not do that until we believe it is a viable alternative. He hoped they would start with the hardest part. What would be the hardest part to mitigate and take that first? It may be environment, or it may be transportation.

Councilor Barnes appreciated listening to the testimony. Some more emotional than others, and some based on fact. As much as her fellow Councilors hate to hear her say this, she worked on the issue not unlike when she was a reporter. She found three sources to back up the claim and base her decision on fact – something she has learned for Councilor Lancaster. He told her the best way to make decision was based on fact and not emotion. She had questions and comments she wanted Mark Hendricks to address that were relevant to the issues. She was not taking public testimony. Something has come up with the industrial area. The reason she asked Mr. Hendricks to represent the area was because there have been some concerns and specific claims, and she wanted him to share some information that would indicate the North Industrial area is not dying and is not dead and really has an impact on our community.

Councilors Lancaster's only caveat was that since the previous decision was to eliminate any more public testimony, he stated at that time his desire was that if there were any new information of any kind, regardless of its source, he would like to hear it. He was willing to agree to this. On that same basis, it would be opened up to anyone who had new information.

Councilor Barnes said it was new information. She could announce it, but she wanted Mr. Hendricks to announce it because it related to his company. She did not believe that it was her place as a Councilor, but she thought the information was vital.

Mayor Bernard said that was her choice, but it would open the proceedings up to all who believed they had new information.

Mr. Hendricks indicated he would do whatever the City Council wished. He was there to answer questions as he has already testified on the matter and has no additional testimony. He has a fact regarding the business.

Councilor Barnes decided not to ask Mr. Hendricks to speak. The community needs to know there is a great piece of good news that indicates there is growth and prosperity in the North Industrial area. It means the addition of new jobs for this community. It means that something extraordinary is coming. It means a new tax base – a strengthening. She appreciated Mr. Hendricks being at this meeting and knew his announcement would be forthcoming shortly.

There was a lot of concern about how people's property values would go down, so she called the County Assessor's office. Ironically, the Assessor's Office said they thought someone would have called by now. According to their records, no one had talked to the Assessment and Taxation Manager whose name was Bob Vorman. Although he could not be at this meeting, he authorized Councilor Barnes to quote him verbatim. "There will be those not bothered by development and some belief that it could increase the value of properties surrounding the area. He has seen this type of impact on people and how they perceive this will happen in Clackamas County. A case in point is Lake Oswego where the neighbors were very concerned over Lakewood Drive and the railroad situation. However, property values increased because of that situation, and he would be more than happy to talk with anybody concerning what he called normal reaction and concerns."

In addition, the Cornell's recently brought up testimony concerning some literature and newspaper clippings regarding an interview of Richard Shook. That was 20-some years ago, so she e-mailed Mr. Shook and asked him point blank, 20 years have gone by since you last were interviewed. How have things changed? There were two e-mails back to her. One of them said please do not put this in for the record as it was for her personal enjoyment. The one he would share was, "Thank you for your interest in the fate of Kellogg Lake. Several of your questions have complex answers that need to have further research before they can be answered. I would think if restoration of

Kellogg Lake either as a lake or drained and restored as a stream would be much more in fitting with the vision of the Milwaukie riverfront.” He went on to say, “We are in position to actually ask the powers that be with TriMet, ODOT, and others to actually restore the situation. It is not something right now that is of great importance because of relatively low wildlife value at this point is because of two things. Noise is an issue, but the point I was probably trying to make 20 years ago was that it seemed to me at the time that additional apartments being constructed on the west shore was likely to be a problem with human intrusion including their pets, the issue of noise per se. If the background noise is constant – especially white noise – most wildlife that does or would occur at this site would be less disturbed by noise than by the intrusion.” Mr. Shook was more than willing to work with the City, ODOT, and others as are the members of his group including the Friends of Kellogg Lake and a gentleman named Richard Shook who wrote to her as a follow-up saying several things about the habitat in that area and the concerns he had. He said, “A significant restoration has to be made at this point in order for those things to happen and be better in that situation.”

Councilor Barnes understood the Link proposal was going to be discussed. Her concern regarding that was that this is federal funding that has to include a transit center which means buses have to be put someplace. Underground would run 20% - 100% more expensive than above ground, which is the Link proposal. No one said they would like to pay 20% - 100% more for that. Finally, it does not move it out of downtown Milwaukie. It actually puts it closer into the Historic Neighborhood.

Before she read her statement, she wanted to say she has never been more disappointed that this has become a personal issue to so many people. She felt like she had to stand up for her staff. When she is a teacher and a parent calls, and she does not having the backing of the principal to say maybe she is right and maybe she is wrong but we are going to look through it. He does not allow people to stand on the sidelines and scream at her, denounce her, and threaten her. Any general human being would think in their hearts that if a tactic is used to threaten staff, then you have to question why. It is not based on fact but on threats. Badmouthing our city manager in public is an embarrassment to her. She has no respect for anyone that tells her Mike Swanson is a liar. She has heard that. She has heard that at 9:30 at night on her phone. She has lost all respect for an individual who will call her staff and city manager a liar. For putting her city planning staffing in a position where they feel threatened and hurt. Where Mr. Gessner's name has been chewed the shreds. Where Alice Rouyer has done her best and has been treated poorly. It bothers her, and she will stick up for the staff that has worked diligently. This is a neighborhood decision. These are people in our community that need to make the decision, and we are going to step back. They might make the wrong decision -- by making sure this was all set up so the decision was made by the community members. No. You made the right decision. This was not top down. These were industrial leaders, neighborhood leaders, people who were interested in going to meetings and listening and debating. That is our process and why we have American politics to open the door so people can debate the issues. She was proud that the process was open. She was proud that the City staff stepped back when the votes were taken. She was glad the residents had their say. It went to the Planning

CITY COUNCIL REGULAR SESSION – SEPTEMBER 21, 2004

DRAFT MINUTES

Page 12 of 33

Commission and people had their say. She remembered the Planning Commission member who looked at Council and testified he would have done it all over again because he felt like everybody was heard. That meant a lot to her, and she would take his word.

Councilor Barnes read her statement. Compromise, one of the toughest processes known to man but one that is needed in order to make the best of any situation. That seems to be the case for the transit center in Milwaukie. There are two factions, both believing their cause is best for the health of Milwaukie, and both in various ways are right. The job of this Council is to look at all of the information, review it, research it, and deliberate to help create a long-term vision based on input. This is not a decision any one of us is taking lightly. The important aspect is that the governing body makes an informed decision based on fact. This entire process has been conducted in an open and forthright manner. After 12 hours of testimony and a 6-month formal review process that included all of those who wanted to be heard, we have come to the time to make a decision. More importantly, the process was not run top down. It was run by interested citizens who spent countless hours coming up with their own decision. That was clearly a decision by the Working Group made up of local citizens who were interested from the start. Ironically, at times it seems we are not debating the same issue. The debate is about a transit center. Light rail is secondary and not something this Council is deciding this evening. Voters will have that chance to say how they feel about light rail in Milwaukie at another time. The decision is only on moving the transit center out of our downtown core area where the buses stop and layover and where best they can link Milwaukie and its bus riders to other locations. The Downtown Plan adopted almost four years ago includes a proposed transit center. The Plan marked the former Safeway site for its location, but that plan changed. It will now mean the development of a new home for some and new business for others. That means we have a new revenue source for the City. That means more money for the library, police, and neighborhood services. The Plan also includes the need for open spaces and specifically asks for open spaces that include park land, open space, and riverfront amenities. We can accomplish that. There is the contention the proposal violates the Milwaukie Downtown and Riverfront Land Use Framework. The Plan envisions a transit center in the downtown as one of the six priority projects. As for open space provisions, we are taking some open space property. The City has already made up for that loss with 78 acres of park and open space in just a short period of time.

Let's talk about economics. Local voters have made it perfectly clear that they are not going to put up with any additional funding right now for our school, city or state needs. As a municipality, we must find other sources that include our local businesses and industry. The proposed relocation of the transit center to the ODOT site will eliminate two businesses and will be more costly over time due to the increased operating costs. When our North Industrial base is impacted, so will the funding for our library, police, and code enforcement. Ironically, any of the 2-point options still leave us with the park-and-ride at the Kellogg site -- open spaces are gone if we choose ODOT anyway. ODOT has made it clear it is a location that has more questions than answers and will

not make sense in the long run. She cannot imagine anyone wanting to get off a bus at night at that location.

As for the buses in downtown Milwaukie, the information concludes that currently 73 buses run in two directions during midday. The ODOT site would mean 84 buses would run. If the Kellogg site were chosen, the number would decrease to 62. Now for the good news. TriMet will be providing water and electricity hookups for our Farmers Market vendors because of the change. Milwaukie gains 47 parking spots for downtown visitors. The parking lot will mean a place for visitors to come to our waterfront. The Riverfront Board, which she e-mailed, is supporting a proposal that would mean boaters could drop off their boats and park in designated stalls at the new parking garage at Kellogg and come back to the riverfront without tying up space along McLoughlin or adding additional blacktop at our riverfront park. That means more Greenspace on the riverfront for recreation and development.

There has been a great deal of discussion regarding TriMet riders. There have been some discrepancies among the figures, and the best we can determine is 41% of those who use the transit center live in the 97222 zip code. For those who say we are being used as a collection site for Portland, 82% of the riders in Milwaukie are going someplace other than downtown Portland. Nobody wants additional traffic to clog the streets of the Historic Milwaukie Neighborhood. Unfortunately, positioning of Hwy. 224 and McLoughlin makes that a difficulty. People will always use those streets to pass through. The transit center is in downtown Milwaukie now. The logic is for people wanting to use the park-and-ride to drive Lake Road to Park Street to McLoughlin Boulevard if it moves to Kellogg.

Finally, Kellogg Lake itself. She would love to see the restoration of the lake and will push for it to see our citizens work with Metro and TriMet to make the area even more attractive. Part of our responsibility with making this decision is to make sure the design of the center fits with the City's plans. We will be part of that process. We will be part of the mitigation considerations to make sure the City's interests and residents are included in the process. That means residents around the lake will get a chance to be a part of the procedure. We have to face reality. If we do not make the decision, we will be left out of the process, and nobody wins under that scenario. She was sorry there were people who believed the process was flawed. After viewing all of the notes from the Working Group, the Planning Commission, public testimony, staff reports she researched and discussed with the neighbors and other residents in Milwaukie, she concluded the process was indeed open and honest. Local residents who could be impacted were notified through a variety of sources – letters, *The Pilot*, and local media. None of the process has been a slam-dunk. None of the process has gone on without debate and compromise. Even a decision by this Council will not be the final one. A decision by the Council is a recommendation with stipulations. The Council is sending a clear message to the powers that be that we are a community of concerned residents that will be watching the process very closely. We do expect something in return. We expect the interests to match our vision for the greater good.

In conclusion, Milwaukie, in order to survive and flourish, in order to generate needed revenue to keep our library open, our police in force, and our neighborhoods to receive grants, must be a willing player with others. We are not an island unto ourselves. There are those who believe Milwaukie cannot make a decision. That may have been true in the past. This time, we come to the plate with high expectations. We chose not to give up, not to play defense, and not to roll over and whine any more. We can be thought of as visionaries who finally realize that politics is a give and take situation. Our people are worth something because we do have dreams for a vibrant city, and we expect to be heard at the table because we are willing and able to step up to the plate. Jean Michel, one of the most anti-rail people that was part of the recall effort, told her to stand her ground. That said enough for her, and she will vote for the 2.5 site.

Councilor Lancaster has been here for six years. If there is one true thing he has learned, it is that democracy is messy. Regardless of the issue, someone will not be happy with the decision. It is seriously incumbent upon the City Council as the decision-making body to make sure it has evaluated all the possible information and get to the best decision it can with the facts before us. That is a process he has used in his six years on Council and in his personal and professional life. That is exactly the approach he has taken with this situation. He prefaced his remarks by saying that emotional aspects have done some harmful things. A lot of those things are a natural course of issues about which people have a lot of passion and emotion around.

He looked at this and reviewed everything the City Council heard. One of the big challenges in doing what we do is that so much information comes so fast it is impossible to assimilate even half of it. Even in reviewing it, one cannot get it all – only the highlights that you can do something with or use as a means to explore further to get to what you think is the right information. He looked at this from two aspects – long-term impacts to Milwaukie wherever we put the transit center. One of the big challenges is that we are chasing federal dollars, and they always come with huge strings attached. In this case, where the transit center is concerned, it has to be on a light rail alignment regardless of whether light rail ever gets built or not. He has serious doubts that it will ever be built to Milwaukie in our lifetimes simply because of the funding. Councilor Barnes made a good point in saying that taxpayers have stated over and over again, even with something so close to most people as education, that they do not have more money to give. They expect us to be frugal with the money we have and have high levels of accountability. The other aspect he looked at was very strictly functionality of the transit center in terms of what it is and what it does and what its impacts are regardless of where we site it. He went entirely through all the information again with this framework. He discovered a number of things he did not know or missed the first time he thought were important to help him frame his look at the whole scenario. The City Council asked for a Working Group to be put together to identify the issues related to the LPA decision, which was the Southgate site. There has been a lot of discussion about the process. One of the things that has concerned him was that there were a lot of people who felt the need to defend the process. From his experience when there is over defense of a particular issue, then there is something more there you need to take a look at. He wanted to state clearly that his remarks were observations

and should not be taken as criticisms of City staff, citizens, and TriMet staff. He hoped everyone would take it in that context. Some of the things he would bring out may not have an answer, but he would raise the question because that is what he saw before him.

The process was really a short one. Maybe he was the only one who could say that having been through the agonizingly long process of developing our Comprehensive Plan and developing and finishing our Downtown Plan. Those were processes that took years. More than a thousand people participating in hundreds and hundreds of hours. From his perspective, six meetings over a five-month period was a pretty short process. One of his concerns and constructive criticisms about this process, and largely it was quite good, was we may have erroneously put on the Working Group a heightened or artificial timeframe to expedite their decision. When he went through the material, he saw continuous references to timely siting. We have in our resolution a 2006 date for completion. Things do take time, but that does not mean we should expedite the process to our detriment. The other concern about this particular process was that the business community made an assertion that it was left out of the LPA decision. Councilor Lancaster believed we demonstrated clearly they were not, but for whatever reason they chose not to be involved until it was actually made. The fact that they came to us at the 11th hour, he believed the right thing was done. The group was formed, and they were invited in to look at ways to mitigate the impacts of the LPA decision. The charge was basically to find those mitigation elements – not to find a different place to put it. That would be the only other small criticism he would have in that even in documents themselves, and to the credit of the business people who spoke to the City Council admitted right up front that they got involved strictly to get it to go someplace else. Those were their words. He did not think that was a very good way to start the whole thing off. How we frame that differently, he did not have answers. His remarks are not intended to illicit answers, but simply to make observations.

Councilor Lancaster went through a number of documents and certain comments he thought were important. The other is that in the form of a criticism, he thought it was possible that the direction of the group was tainted early on by misinformation. This was not purposeful, and he referred to the information received from TriMet. When he went through the documents again, it was remarkable in terms of how it was laid out and when it occurred. The Working Group started out with the information that the additional cost of the ODOT site was \$1.4 million. That was a staggering number. Other comments Phil [Selinger] made spoke very clearly that there was a heavy emphasis in the group on operating costs. That, of course, has to be driven by TriMet. That is understandable because they are in the business of providing transit at the least possible cost. They are our servants. Our taxes pay for what they do. They should do that. Where he found that to be troubling was that they threw out information that service to Milwaukie would be cut by 41%. There was a series of these hyper-negative factually made statements by TriMet that he thought biased the ODOT site early. He thought that did us a disservice. We subsequently found out that those numbers are very different. As constructive criticism to TriMet, and he recognized this was conceptual and we are not getting into the hardcore, fine numbers, we have to have

certain numbers and assumption to go on in order to walk through a decision-making process. Phil said on more than one occasion that these numbers are done by their experts and professionals and that they are routine, simple math. If it is routine and simple math how can so many huge mistakes be made not once, not twice, but three times. His constructive criticism is he hoped in the future that TriMet does a lot more due diligence before it presents information as being factual.

One of the other elements that struck him in terms of the impact of transit centers on the areas they are in, Phil said right up front that they like to site transit centers or park-and-ride scenarios outside of town centers or core areas because they know they increase traffic. It is not a hard thing to understand – of course it would. The other thing that struck him as he went through the information was they also identified when Southgate was an active park-and-ride they did a survey of license plates and found that 52% of those using the park-and-ride came from the south. That means that 48% came from someplace else. He challenged the assertion on a number of levels that TriMet makes that it is important to have it way up front to intercept traffic early. Half of the traffic is coming from somewhere else. From his perspective, the need to have it way to the south does not hold credibility.

Another thing that was compelling was in one of the statements from citizen input and from a gentleman who came to testify before the City Council from the Gateway neighborhood. Here was a person who came, as far as he could tell, unsolicited after hearing the City was thinking about placing this right in a sensitive area to discuss the negative impacts. That was something Councilor Lancaster believed the Council should take a close look at -- where we put this. He said that knowing that he would present something later that would be in the downtown, but that is a scenario we need to take a very close look at. The other piece to that is that we need to look at history of other projects that have already been done, so we can learn from that. He did not know if we have taken the time to take a close enough look at.

Part of this – he will go through some staff comments. A majority of the Planning Commission voted in favor of moving this forward. In his business life he always says follow the money if you want to get to the real deal. We know where the money is coming from, and in this case, the scenario is to follow the information trail. Where did it come from and how did it get there? One of the compelling things he looked at when he went back through it was the erroneous information from TriMet that our staff largely relied upon to come to its conclusions. That is a serious problem. It is throughout the documentation. The February 17 document from staff to the Planning Commission under the category of reasons for supporting option 2.5 included such things as the option results in better traffic flow. He will cover that later, but the City Council had testimony from a transportation professional that clearly demonstrated that was not the case. The information given to the planning staff led them to this conclusion. Another is that it creates opportunities for infusion of money into downtown Milwaukie. All of the evidence – he believed a majority of objective evidence from past projects clearly demonstrates that transit centers do not bring growth and development to downtowns. They in fact create negative impacts. That is also an erroneous assertion. He found it

curious when Councilor Barnes talked about parking boat trailers on the site, how do we get to only needing a two-acre footprint? He would be interested at some time to find out how we get to parking boat trailers there.

In the documents that went to the Planning Commission from staff dated April 8, there was a long list of items of why the Commission should support 2.5. It cited certain things like commuter traffic through the City is reduced. That is clearly not the case. Long-term access to the sewage treatment is improved. He was not sure access to the sewage treatment plant was relevant to anything. One item referred to remaining federal and regional processes and environmental reviews. He was not sure why that was even listed. There were lots more, but he was going to skip most of them. One thing he found troubling and we never asked the question but he supposed it had to do with negative impressions and communications that took place in this process. The last item in the list of reasons to support 2.5 was that the Working Group process should be given great weight. It devoted five months of study to the siting, and if it appears not to be given its due consideration, it would be difficult to secure future volunteers for future efforts. He was troubled why such a comment would be placed on list of recommendations to support it. If it was a good process and things were done as best we could, why would we need to have this comment? It was a rhetorical question; he was not asking for an answer. It was something he found troubling.

He spoke earlier about TriMet's numbers, and one of the more impactful ones for him was the \$1.4 million. They said that was an accidental doubling. Then they dropped the figure down to \$600,000. Even a doubling of \$600,000 does not come to \$1.4 million. How do we get to these numbers? Another quick example. The chart that showed the additional costs for each of the locations, just for the heck of it because he started finding all of these errors, he checked the simple math of additional weekly costs times weeks of the year. Every single number was wrong. He found that a bit troubling when talking about simple math. The other issue was the number of lines and so forth in the scenario, which he will cover. He also found it interesting that in the testimony it was stated – most of these are comments by Phil – it says that the basement level on the site would be below the 100-year flood plain. He has worked most of his life in private industry, and most of the people he has worked with would never build in a floodplain. He found it a bit troubling we would spend millions of dollars of public money and build in a floodplain. They go on to talk about how they would have to stay no lower than 1 foot below the 100-year floodplain. It does not make sense why they would even go that close, but apparently they do. The other thing he found, and part of what he was leading to, in terms of the site itself, we know it was a landfill. There was new testimony from people who actually witnessed some of the things that went into it. In the testimony from TriMet, it talks about a document prepared in 1992 by PBS Environmental. It goes on to talk about what they say is in the pile. When you read this and compare it to testimony, none of that stuff was listed. If we pursue it and do the core samplings, it will be more problematic than we think. He did not want to rush into a particular decision that likely has numerous fatal flaws. This is a potential fatal flaw for the site, but it may not be. This raised a big red flag for him.

Another issue about the Farmers Market. If you do the math based on the TriMet documents, a bus would go by the front of City Hall, right in front of the Farmers Market every 2-1/2 minutes. He was sure we all have experienced the pleasure of standing where buses stop and go. The screeching brakes, noise, and exhaust as they take off. He thought that would pretty much kill the Farmers Market with that much traffic. The math comes out to about every 2-1/2 minutes. He knew we could make mistakes but wondered if in fact they were not done for a reason. Someone brought up the issue of the sample pictures of what the parking garage would look like. He found it curious that Mr. Cornell could come up with a reasonably accurate rendition while TriMet gave us a three-story structure. It was not even close to what it would really look like. He found that a little bit troubling.

The environmental issues are, he believed, another fatal flaw regarding the site. Based on his cursory look, building anything on that site violates 3 or 4 of the state land use goals or rules not the least of which is the Willamette Greenway Policy. As memory served him, when the City bought that site there were three private parcels that were part of it. The City bought two of the additional properties, but Metro bought the third one with Greenspace money. They deeded it to the City, and it was his understanding that there was a condition that it never be built on. This puts us into a huge political quagmire in that Metro would have to approve the construction if that is what we want to have happen. If it was possible, how do we pay for that money and how does Metro reconcile going in complete reverse of its statewide policy? He looked at Metro's website and on April 15 of this year, they started with recommendations from Michael Jordan, they are in process of ratcheting up even stricter sanctions regarding class 1 and class 2 riparian areas. We were all given these nice maps about what areas of Kellogg Lake are riparian, and this site has both class 1 and class 2 on it. He found it problematic that we could be forced to authorize construction on that site just from sheer political pressure.

Councilor Barnes asked if Councilor Lancaster had actually talked to anyone at Metro. She called Metro Councilor Newman, but he was not in the office.

Councilor Lancaster understood Newman was out of town, so he did not have a discussion with anyone at Metro. Again, this was his cursory review. These were the flags that came to him as he tried to review all of the information. In regards to Milwaukie's Comprehensive Plan that has been cited numerous times, has anyone on the City Council had a chance to look at the Comprehensive Plan? It is a hard document to get through. He was involved in building and finalization of the document, and it was a long and arduous process. What struck him about that, because he looked to see if the City went to this site how contrary it would be to the City's Plan. It was much, much worse that he would have expected in violation of the Comprehensive Plan. He would not read all of the sections, but it starts off with the overriding management policies. It says, "Existing natural resources and development of character will be preserved, and new development will contribute to improving the quality of living environment and a sense of City-wide identity and pride." It goes on into multiple sections – Resources; Statewide Planning Goals 3, 4, 5, 6 and 7, which are

statewide land use laws that we have to comply with. Then there is a whole section on historic resources. In each of these different categories of the Plan, it specifically names Kellogg Lake and Kellogg Creek and the surrounding area. There is a whole historic resources section. There is a whole Objective 1 – Open Space section. There is a whole Objective 3 – Scenic Area section. There is a whole section that deals with the views as part of the Scenic Area section. It talks about the Willamette Greenway. His point was that there were so many provisions that were very specific and very comprehensive and he remembered some of the testimony that was clearly aimed at preserving that as a natural area. If we were to remove that from the stock of open space or wilderness area, we only have two little, small parcels left in the whole downtown area not counting the waterfront which will someday be a good space for us. The problem is that there is no way to recover from that. Once you take that away, you cannot get it from someplace else. The staff report referred to using the money from the sale of that site to increase open space, and it made a reference to the waterfront. We already have an open space on the waterfront. He did not see how that added to it. That is problematic. Part of the downtown zoning is very specific regarding transit centers. It says no transit centers will be built on that site. One of the other things that was ancillary for him was that when he looked at the actual transit center and its impacts on traffic. We are in the process of developing our McLoughlin Boulevard improvement project to make the crossing to the riverfront more friendly. The fact is, the transit center sited at that spot will dramatically make the traffic on McLoughlin Boulevard worse and defeats the improvements to get to the waterfront.

Specifically, when Karen Cornell testified before the City Council, from his perspective she was a credible professional and highly credible witness, and in fact TriMet did not refute any of her comments. They had some other figures, but all of her testimony was never refuted, so he took that to mean it was accurate. He had no evidence to believe it was not. One of the things that struck him about her testimony, and he read it in other places too, was what is a transit center and what is it supposed to do. What does TriMet say a transit center is? It is supposed to serve three functions: access to all transit services in one location. He cannot imagine what services they provide, so they must simply be referring to light rail and bus transit. He did not know what else that could mean. The ability to transfer between lines and layover and schedule recovery. If you take a technical look – he went through the information many times to make sure it was clear in his mind and that he was understanding it correctly – the actual impacts of what they have said in terms of the scheduling does not meet any of their criteria of what they call a transit center. It does not meet TriMet's own test. We were originally told when they laid it out under their own scenario, not all of the layovers would be in the transit center. That is documented. Because that was a concern for all of us -- he asked specifically himself if all of the layovers would be at the transit center or not. Then they reversed themselves and said, yes that they would all be there. It is that continuously moving – what it is really going to be. But the other part he found troubling was that in the process he recalled two TriMet people saying they discovered some better ways to do routing that was going to reduce traffic in our downtown. His criticism to TriMet then was why was it not optimal in the first place. Why are we just now getting around to trying to improve it after complaining about it for how many years? He found

that troubling. The issue for him, again based on the transportation expert's testimony, was it would actually be worse in terms of traffic if we put everything at the transit center. The cost to go to the Kellogg site is raised to \$380,000. According to her figures, the additional operating cost which was the big, overriding negative in the early decision-making is only \$162,000. He believed TriMet came back finally with a figure of \$200,000 additional cost to ODOT site. He recalled asking if that was the final answer. He did not think he got one. Again, it was conceptual, and he realized the difficulty. We need good numbers to work with. Now we are taking the cost factor out of the equation. The reason he made this an issue was that when looked at all of the records of the group and how they got to their decision making, at a very early stage, they were evenly split between the Kellogg site and the ODOT site. He was convinced based on the information that he has gone through that the overriding cost factor based on bad numbers is what drove them away from looking further at the ODOT site. He will address a couple more things about the ODOT site in a minute. The other reason he was talking about making downtown or McLoughlin Boulevard traffic worse is based on TriMet's numbers and their experience of each bus taking so many cars off the road. Again, this is averaging over wide, different areas. He could say based on his experience those numbers vary widely. The reason he referred to that was for an historical perspective. I was a hardcore opponent of light rail. He spent months and hundreds of hours studying the topic before he decided which way to fall and then actively lobbied against light rail. It is because of the impacts of the numbers. The same thing basically applies to transit centers depending on how they are designed. Based on their numbers, replacing 525 cars is what they would do. They would replace that with up to 450 buses. If you do the simple math, just from his perspective, a bus probably roughly takes up about the same physical space as two cars. He asked if that was a reasonable assumption. The physical space. If you go on that basis, if you take 525 cars off the road and put 450 buses on the road, the net effect is adding 375 cars to the traffic space. That is a huge negative impact. He looks at himself going downtown and maybe eating in a restaurant or walking across to the waterfront, so now he has 375 more vehicles to contend with. Now they are buses instead of cars. He did not see that as a positive impact.

Councilor Lancaster referred to the early decision-making process, and he looked at the documents, they quickly came to a split between ODOT and Kellogg Lake. When he looked at the individual Working Groups they had and the scenarios, strengths, weaknesses, etc., the only weakness that was listed on their document for the ODOT site, Tillamook Branch, was its distance away from the downtown. If that is the only real objection, to him that is a positive because of the negative known impacts of transit centers in downtown areas. Which is why TriMet has already said they don't build them there because of it. The other thing he found curious was in the early documents of January 22 they listed additional work to be done, and the groups requested TriMet consider the ODOT site to see if it could accommodate the transit center relocation. It also said that TriMet's claims of decreased bus service to downtown and increased operating costs were questionable. They asked that TriMet demonstrate evidence to address these issues. He did not see anywhere in the document that they that they complied with that.

The last issue relating to the ODOT site. He did not believe the ODOT site got its just due. In good conscience he did not see how the City could go forward with a recommendation on the Kellogg site unless we fully explore the ODOT site. These were the reasons listed as negatives of the ODOT site. Would produce better traffic conditions than the LPA. They state the reason for that is because buses and cars would be added already to a congested area. Based on the information he looked at, the very same thing applied to Kellogg. That cancels it out. It refers to the impacts on business community. He is a big business supporter as was demonstrated over the years. He was not unaware of potential traffic impacts to the freight movement in the industrial area. He was troubled by the fact that when he went back to look for any evidence that had been submitted as to the actual impacts based on individual business, he could find none. The only one he could find was vague reference from a representative from WW Metal Fab who guesstimated that three 40-foot trailers would come in every hour. That is not that much traffic. If there are real impacts, he would like to see that. That was part of looking at the ODOT site that did not occur. He thought the City Council needed to see that. It would eliminate 2 businesses – that is not good. It is an unfortunate impact. More costly overtime due to increased operating costs. That is still being said and based on what he has seen is absolutely wrong. When you compare to Kellogg, the ODOT site is less expensive over time regarding increased operating costs. Based on the information in front of us. Farther removed from downtown is a good thing. If you look at Karen's survey of 100 people, 90% of them did not want to get to the downtown; they were just transferring. He would rather have them someplace else because that is what transit is supposed to do. Get you from one place to the other. Maybe down the road light rail, should it ever come, would be the ticket for Milwaukie to bring people to a destination location with our redeveloped downtown and redeveloped waterfront. We will be the place to go. People are not going to get there by bus. Then it refers to having to relocate ODOT. He and the Mayor met with the ODOT regional manager. Basically, he said was that if we want to revisit it and look at the options, that was perfectly fine with him. He was not aware that every option had been explored. To his defense all of the information was handled by his subordinates, and he relied on whatever they provided. We have pretty clearly established that we did not give it a full look. The other part he would say to that regarding the ODOT site was, what he found in the information was that the transit center itself probably would not be a problem for them, but light rail could be especially if it bisects the property. He had some photos, which he took himself because he goes down there periodically to see what kind of activities there are. They only use a small fraction of that 8 acres. His honest opinion was that if they looked from a business perspective at the asset and the utilization that they may in fact not need to be relocated. If in fact they did, and this was the best site for us as a community and the best site for a transportation system, should our regional partner, part of our state government, be willing to make a sacrifice and move to benefit the greater community. He thought so.

We took a lot of public testimony. Two of our neighborhoods are unanimously against it. He took to heart that the Working Group took its vote, and the majority of them went

CITY COUNCIL REGULAR SESSION – SEPTEMBER 21, 2004

DRAFT MINUTES

Page 22 of 33

for it. But when we have two neighborhoods unanimously against it. He took notes on everyone who testified. He kept a list of those who testified for and against and it was almost 2:1 against. He took that to heart – people who were actually willing to come here and testify. That meant something to him. We had two attorneys testify before the City Council against it. What that tells him, speaking in terms of potential fatal flaws, is that if we go that route it virtually guarantees litigation. That means the whole process will be long and protracted and acrimonious. Exactly what we do not need? In terms of the business impacts which he does not take lightly, and the amount of tax base that we get notwithstanding any new opportunities that are coming into our business area. He thought it was important to keep some things in perspective in terms of our tax base and revenue. We have such a small industrial area that we did not even make Metro's significant industrial land map. As far as they are concerned, we do not exist. He did not necessarily agree with that, but in the greater scheme it is a pretty small area. The other thing that struck him when he looked into it further was when we look at where our tax base actually comes from industrial enterprises represent about 12% of our tax base – only 12%. Commercial, which is primarily retail, represents about 8%. The entire remainder is our citizens – it is a residential tax base. When he looks in terms of how we balance impacts and who it impacts that spoke to him that we need to put our citizens first. He looked at some of the businesses down there and in fact went to some of the business representatives who were willing to share the information. The vast majority of their employees do not live in Milwaukie – they live someplace else. That is the information he saw and all he had to go on.

In conclusion he wanted to make sure it was clear to anyone listening that we are committed to a project. We are committed to finding the right site and moving the transit center. We have demonstrated that for years. While this may be a little bit messier, a little bit more protracted than we like, we are committed to getting to a project. He thought it would be irresponsible for us not to thoroughly look at every potential option before we decide which one to really pursue. That is why he was saying we need to give a serious look at the ODOT site. We need a decision that is going to unify our community, not divide it. He came to the City Council as a result of the recall. He went through some of the ugliest time – he knew most of these people's faces because they were right there with him going through it. It was some of the worst times you could ever possibly imagine. We got through it. We moved in a positive direction. We made some significant changes. We are on the mend. We are more unified. We got past this. We are moving in a positive direction. He would be really upset if the City Council made a decision now that reverses those years of healing and positive progress. He thought the best thing the City Council could do was to demonstrate that we have thoroughly looked at every option. He wanted the City to take a closer look at the ODOT site before going further.

The other piece was as we had agreed. Unfortunately, he was not able to get very far because of the short time frame with what we have come to know as the Stan Link option. For clarification Stan Link is a local real estate investor who grew up in Milwaukie. He is not advocating himself or trying to create a position for himself. He became familiar with Stan Link as a result of a conversation with one of our residents

who was talking to him and had mentioned he had some ideas for downtown Milwaukee. He met with Mr. Link to see what those ideas were because he is always interested in new ideas. He was the one driving looking into this notwithstanding the understandable and appropriate concerns. He was not able to get a lot, but it was significant. He believed this was an accurate depiction of what we would like to see our downtown develop into. The concept he was excited about was the one that dealt with developing an entire downtown block with one level of underground parking and more stacked on top. The way the concept works is that we can be modified this to work as a transit center. It can be altered to accommodate buses. The reason he was so excited about this concept – he and the Mayor met with Fred Hansen and Phil Selinger at TriMet – and talked to him about this concept. The parking structure was the key because it could not only meet TriMet's needs for our layover center but it would also accommodate parking for downtown businesses. And as we develop multiple blocks in our downtown, it would also serve as additional capacity for transit if that was necessary. It would also give us event parking, so people could come to the downtown and get to the waterfront. This particular concept has been done in numerous other places. The only other additional information he was able to get – and bear in mind to his credit, Link has gone to considerable time and own expense for a consultant out of San Francisco named Gerald Johnson – who is an architect involved in these kinds of projects with public/private partnerships. Successful ones. Some of them have been in the Portland metropolitan area. Assuming that to be true, and he had no reason to believe it not to be, he considered that to be a credible source of information. This speaks to Councilor Barnes's comments regarding the cost of parking structure. Did anyone give a ballpark cost for the structure at the Kellogg Lake site? He looked through every document, but he could not find it. He seemed to remember someone saying \$20 million or \$21 million.

Councilor Barnes thought that number was high.

Mayor Bernard thought it was more like \$3 - \$4 million.

Councilor Lancaster was able to get a couple of comparisons of parking structure costs from this consultant who also included a parking consultant to get to these numbers. The numbers, the caveat was that these are general and we never hold anyone to specifics -- but he believed these were credible ranges. For a standalone parking structure of four or five stories -- you are typically looking at \$13,000 - \$15,000 per parking stall. That is about \$7 - \$8 million to build a 533 stall structure. It is a little more expensive to do podium style. That is more like \$18,000 - \$23,000 per stall. That is what we talked about at TriMet. That does not mean it is not doable. One of the other issues for him – and Phil said in one comment – we can get these numbers. If we look at the experience of parking garages, park-and-rides for TriMet in the Metro area, he was reasonably certain that almost none, with the possible exception of the one at 217/26 were, he understood, nowhere near capacity. When he asked Phil about Gresham, he believed his comment was that it was very disappointing. His assertion is why do we need a 5-plus story structure if capacity is way below that. If we look at something like this that could be phased overtime in terms of parking capacity, then we

develop more of our City blocks and add more parking capacity if it is needed. The other element is we get a public private partnership with a huge infusion of dollars into the downtown. From his perspective, in addition to the ODOT site, this concept really deserves further study. When he and the Mayor met with Fred Hansen and Phil, Fred Hansen pointed to that parking structure in the concept and said, "We would love to see that in downtown Milwaukie." His only concern was coming up with the private money to create the partnership. In his conversations with Stan Link, who is in the real estate investment and development community, believes it can pencil out and that a public/private partnership could be developed. He thought that merited more investigation before moving forward. We need a positive decision that unifies the community. He for one, based on the evidence, could not recommend 2.5 without looking at other alternatives first.

Councilor Loomis commented this project could happen if Kellogg Lake is developed and 2.5 goes forward.

Councilor Lancaster said potentially, but not with the additional parking. That is where the public funding combination would have to come into play. The public money goes for the parking element, and the private money builds everything else. You get transit parking and transit-oriented development all in one package. It is absolutely perfect. It has been done before.

Mayor Bernard stated while he agreed, they also said they did not even do it even in the Pearl District, which is a very expensive area. There are some they have done, but Mr. Hansen said it was virtually impossible. He would love to see it happen that way. He saw a similar project in Minneapolis; however, there was no below-ground. It was built exactly like this with parking on the backside. He looked at it as eliminating possibilities and opening new ones. He hoped that Mr. Link would continue to work on the concept. This is a long ways off. There is a lot of time to do something like this. There is nothing that says it cannot be changed down the road. There are many Planning Commission meetings, and many City Council meetings in addition to a lot of testing before the Kellogg site is the final decision. He believed there was plenty of time. There were some good points made about the ODOT site. He thought the Kellogg site did have fatal flaws, and those would be found. Let's do the hard stuff first. For example, Metro's goals and the Endangered Species Act may throw that site out right away. The Corps of Engineers may throw that site out. He still believed there needed to be further study of the site, and that is all we are doing. We could talk more about the ODOT site, but that is not part of this decision. The decision tonight is to study it further. If we form a group, and that group says maybe we should look a little deeper into the ODOT site and maybe those figures are not quite right, then we could throw that back on. He has seen that done every time. He stood there when the City received giant check on for Safeway site. It was done in 1982. There is a lot of money set aside for Milwaukie somewhere. There is potential. There may be a fatal flaw. This is just moving us forward and is not the final decision. It was the Council's responsibility to listen to the Planning Commission and all the other people who gave testimony and all of the people in the Working Group. There were a lot of people at the open houses.

CITY COUNCIL REGULAR SESSION – SEPTEMBER 21, 2004

DRAFT MINUTES

Page 25 of 33

There are also a lot of people who have information, so we need to clear that up. The only way we are going to find out the answers is to study it. He hoped we can disprove the information and that it is done by an independent party to ensure the figures are true. There are a lot of unanswered questions that need to be answered. The site may or may not work out, but we will not know that until we spend more time. He thought the Southgate site was a mistake. If TriMet bought it, they should sell it back. Let it be redeveloped as industrial land and create a job base.

Councilor Lancaster stated how we proceed is important to the success of the process. Given the high level of negative opinions – he did not mention the signatures. The case could be made that signature gathering can be slanted. He did not take 740 signatures lightly given the number of those signers who came before us who are not involved in this area at all. Given the nature of that resistance, he thought it was more prudent to for the City Council to eliminate the other possibilities. From his perspective there are only these two. We would better service the community and impending division to eliminate the other options before proceeding to the one that has so much resistance.

Councilor Barnes responded that part of the problem in the breakup of this community has been misinformation and miscommunication. The one thing she has learned from going door-to-door and going into other neighborhoods, the first thing when she asks, “Have you heard about the transit center decision that is coming up?” Most people have said, “What transit center?” 700 people is a great deal, but there are 20,000 people in Milwaukie. People testify because they are angry. Most people have said what transit center. What about the other thousands of people who just want to go to work during the day, pick up a paycheck, and go home and feed their family. This is not a major issue to them. Just get on with it and save the library or put another cop in my neighborhood. That was her perspective. 700 and some people signed a piece of paper, but she never once heard specifically what was asked. When she did ask, different people were asking people to sign, and they all had different messages. When you ask certain people on that list and tell them all of the perspective, they say they did not hear all of that. Some of it may have been slanted. The five of us screwed up because we did not come back and say this was what was really going on, or here are all the facts until tonight. It is like any other political campaign. You allow the other side to say things and you do not contradict them, then people start believing it. That was the Council’s problem to begin with. We did not step forward and say the staff has said this; they researched this, and we are backing them because that is what we hired them to do. We have put ourselves in this position, and we need to take responsibility for what has happened to our community. We did not play as leaders at the point we should have. Now we will deal with the mess and clean it up because that is what is left for us to take care of. She blamed herself and Council for not stepping forward to deal with this. Now we are dealing with it.

Councilor Lancaster took her point regarding citizen apathy. Milwaukie actually has about 22,000 residents right now. There are only about 12,000 registered to vote. Only 3,000 to 4,000 actually ever vote. That is why the Council does what it does to make

decisions that represent those people. That was a sad testimony about community apathy.

Councilor Stone thanked Councilor Lancaster for his excellent testimony and observations of the facts. She had a fact she would like to bring up. When we as a Council ask for work to be done by a board or commission, group, or staff, we expect that work will be done. That work was not done by the Working Group. This was their charge, "The Working Group is charged with developing a recommendation or set of recommendations for resolution of design issues related to the transit center future light rail alignment and park-and-ride proposed in the locally preferred alternative in Milwaukie." That LPA we are speaking of is the Southgate site. That was never done. It was eliminated. From Councilor Lancaster's testimony, it sounds as though it was eliminated almost right from the beginning or there was a huge bias, maybe, to not even look at that site and try to look elsewhere. She had a problem with this charge not being fully carried out. She likes to look at the facts too and base her decision on facts. She wanted to gather enough information on all the potential options before she makes a decision. We have not really explored those. We have not explored what is going on at the Southgate site. Yes, businesses may not get to stay where they are. There are a couple that would be threatened. As Councilor Lancaster said, the business community, the commercial properties make up 20% of our tax base. The citizens make up 80%. We need to look at that. We need to look at the ODOT site. They have 8 acres that they are underutilizing. She was not comfortable making a decision to put it in the Kellogg Lake site especially seeing how contentious the issue is. We really have to look at the citizens coming before us. Those 740 signatures on the petition – she has been out doing petitions before. She looked at that and did not think they had been slanted at all. Maybe there is a slight margin, but for the most part, those signatures are credible. The people who asked them to sign -- she did not think they mislead them at all. She did not know that for -- because she has not talked them about what exactly they said. Councilor Barnes asked the question, and the answer she got did not make her think that they swayed those people or strong-armed them into signing. She did not take that lightly. The decision about the site. She was under the impression tonight's meeting was going to be Council deliberation not necessarily leading to a decision. This was the Council's first chance to sit down and talk about the pros and cons. We are not really even doing that. We have all given our statements. She thought Councilor Lancaster had done the best job of in terms of going over some of his observations in some of the material we have all gone through and trying to summarize for the Council. She thought that was very helpful. That is why we are here -- to say maybe some of those number need to be looked at. She thought there were a lot of things we need to re-look at before making a decision – particularly looking at the possibility of litigation if this is chosen. She was in favor of looking further at the Southgate site, which was never explored in terms of mitigating the negative impacts to the businesses, as well as looking at the ODOT.

Mayor Bernard appreciated her comments and thought she did a great job too. This is not a decision to put transit center at Kellogg Lake. This was the decision to look at it further. There is a long process to follow from this determination. We are doing exactly

what the Planning Commission said which was to look at it further, and that was what he intended to do. It may not be the right site. He cannot do that without the right answers either, just as she cannot make hers without answers on ODOT. He felt exactly the same way. The Kellogg site may not be the right site, but he did not know that without some studies done.

Councilor Stone did not want to spend money on an environmental study on Kellogg Lake before she knew for sure that ODOT and Southgate were completely ruled out. That is what needs to happen. It is taxpayer money. It is federal dollars, and it is still our money. We need to make sure we look at these and rule them out before we sink any money over there.

Mayor Bernard would like to spend some money on Kellogg Lake to determine the environmental hazards that exist in that ground, and this will pay for it. He looked at it as leveraging. This is a chance to have someone else pay for an environmental analysis of the Kellogg Lake site to determine if it is worthwhile as a baseball field, park, or anything else.

Councilor Lancaster restated his final point. His biggest concern with going forward with recommending Kellogg Lake at this point given the resistance – and speaking from the experience of going through the darkest times Milwaukie has ever had – he sincerely believed if the Council goes through with a decision for Kellogg Lake, that things will be worse before they get better. When you have other things like the Son of 7 Measure – the land use takings measure – which he fully expects to pass again, it only makes it more difficult in looking at that site. It was his understanding that the folks at AOI who are the powerful lobby group that put this on the ballot have inquired about what is going on in Milwaukie. It was his sincere belief based on his experience that it will get worse before it gets better if the City does not do other alternatives first.

Mayor Bernard disagreed. If people take the positive outlook that the City will examine their concerns about a specific site, then that will be positive. He did not understand why this has gotten to be such a mess. It is simply the community talking and gathering together to look at sites that may have some potential. All the Council is saying is that there some potential.

Councilor Stone said this was in the downtown plan and the Comprehensive Plan in terms of what we are doing with this Greenspace. It is designated as a Greenspace. How can we make a decision to violate our own rules, governance, and framework for how we are supposed to plan in our City? How can you do that? She had a philosophical problem doing that -- going against her values. These are our values. That is why these documents were created -- to state clearly that these are the things we hold precious, and we are going to uphold them and do everything to protect them. We are not doing that if we choose this site.

Mayor Bernard believed the Plan also said the City should do anything it possibly can to create a sustainable community, and that involves making some tough decisions. He was willing to do that.

Councilor Stone asked how that could be reconciled. A city the size of Milwaukie is supposed to have 450 acres of Greenspace, and we have 78? We are taking it away.

Mayor Bernard said we are not taking it away. We are studying whether this might be a location. Neither he nor anyone else has made a decision to take it away until there is further analysis.

It was moved by Councilor Barnes to follow the Planning Commission's recommendation to research the Kellogg Lake site as a future transit center site including mitigation. Councilor Loomis added to mitigation that any property not used in the transit center itself is developed in a way that citizens can use. Councilor Barnes agreed to that.

Mayor Bernard wanted to address a traffic study on what this transit center would do to the Historic Neighborhood. He was committed to protecting them. He happened to believe it would reduce traffic, but if he were wrong, he would back away from it. We cannot tell until the study is done.

Councilor Barnes said all she was moving for was the proposal to study this with all of the caveats. The general feeling is we would like to have it studied. Based on the community input already received, these are the things that must be included in the study.

Councilor Loomis seconded it but wanted to make it clear there were mitigation steps about adverse traffic impacts to the Historic Neighborhood and Ardenwald Neighborhood, adverse impacts on the homes adjacent to Kellogg Lake, address the environmental concerns, address the public safety issues, potential adverse impacts on the Farmers Market, address issues arising from bus traffic in the downtown, staff initiates amendments as appropriate to the Comprehensive Plan and Downtown Riverfront Land Use Framework Plan, staff submits a monthly report at the Council's second meeting of the month commencing July 2004 on all of the above, and that this resolution be forwarded to the South Corridor Policy Committee. Those are the mitigation factors.

Councilor Lancaster made one final comment. Just by saying you want to pursue the Kellogg Lake site, you are willing to say you want to undo the Comprehensive Plan and the Downtown Plan we spent six years putting together.

Mayor Bernard disagreed with that.

Councilor Stone asked if that was not one of the amendments Councilor Loomis read.

Councilor Loomis said that would have to be done too. It does not have to be undone completely. He was around when the Plan was being developed and remembered that Councilor Lancaster and Councilor Marshall said it would not look anything like this. It is going to change and change and change. It is a starting point. 24 years is long enough to study something. It is time to get something done in this town.

Councilor Stone was worried the decision to vote on studying the site will arbitrarily lead to the fruition of the transit center being placed there. She worried about how we would feel about that decision in 20 years. How do those people feel that decided to put the Kellogg Treatment plant where it is? We are trying to get rid of it now. She was not comfortable making the decision tonight knowing that we have not fully addressed the ODOT site and the Southgate site. The Working Group did not do what it was charged to do. The Planning Commission gave the Council this recommendation, but one of its members also came before the City Council and testified she was not sure about her testimony. Another one resigned her position because of it. We did not have a strong recommendation from the Planning Commission. The Working Group was also divided. This community is divided. She agreed totally with Councilor Lancaster that this is going to cause a watershed of events that are going to be even more contentious. She feared litigation. Attorneys spoke for the people in opposition. We are really not doing the community a service by going down this road at this time. After we study the ODOT site and look at the mitigations to the current LPA site, the Southgate site, then and only then would she feel comfortable in making such a vote to look at this and spend money on the Draft Environmental Impact Study.

Mr. Swanson cited 27(D) of City Charter. The last sentence reads, "The manager shall have the right to take part in the discussion of all matters coming before the council." He wanted to clarify what the City Council was doing and what the City was being asked to do. The powers that be are the powers that make the decisions. TriMet is responsible for the transit center, for considering whether or not it will proceed with a site. To do that, they have a great deal of work that has to be done. They have engineers and consultant to retain. That requires a considerable outlay of funds, which they hope, of course, are going to be eligible for federal reimbursement. It is possible that through that process, which would be no different from what any developer would do in deciding whether or not to do a project, that they may, in fact, find a reason or reasons not to follow through. If they find no reason to do so – and again, they will be going through environmental processes that will require public involvement. If they deem the project feasible at that site, they will also be required to submit land use applications to the City, which will result in a good number of meetings that will include public input. He did not want anyone to think this was going to be a \$20,000 project and that someone will come back shortly to say this does or does not work. What we are setting out to do is saying, "Here is the one we are going to focus on." There may be a fatal flaw or flaws. They will have to have land use planning consultant put this option next to City's land use policies and decide whether or not it works. At the same time you have the alignment question. The LPA provides for one alignment. The recommendation looks at an alternate alignment and will have to travel through the same process that the original alignment decision traveled through. It will probably be

CITY COUNCIL REGULAR SESSION – SEPTEMBER 21, 2004

DRAFT MINUTES

Page 30 of 33

forwarded first through the South Corridor Policy Advisory Committee for discussion and argument.

Mr. Swanson suggested the form of the motion. The Council is making a request of the South Corridor Policy Committee to consider a different alignment. You are transmitting to TriMet your recommendation on the site so it can begin its process of deciding whether or not to advance the development project. One action is the light rail alignment decision, which is that the Tillamook Branch light rail alignment through the North Milwaukie Industrial Area be recommended to replace the alignment along Main Street. Second, that option 2.5 – Kellogg be recommended to replace Southgate as a preferred site for relocation. There was a list of mitigation and design considerations, which Councilor Loomis read and encompassed what Mayor Bernard had talked about.

1. Mitigation and design elements related to the transit center relocation address adverse traffic impacts within the Milwaukie Historic and Ardenwald/Johnson Creek Neighborhoods, and that the elements be developed with participation of neighborhood representatives and residents and City staff; and
2. Mitigation and design elements, including but not limited to architecture, noise containment, landscaping, and lighting, address adverse impacts on the homes adjacent to Kellogg Lake and/or in close proximity to the recommended site, and that the elements be developed with participation of homeowners and/or residents and City staff; and
3. Mitigation and design elements address environmental concerns, including the loss of open space and potential environmental impacts on Kellogg Lake and adjacent properties, that open space enhancements be created where possible, and that the elements be developed with participation of the City's Riverfront Board, Parks and Recreation Board, interested citizens, and City staff; and
4. Mitigation and design features address law enforcement and public safety concerns, and that the features be developed with participation of the Milwaukie Police Department, neighboring residents, and Milwaukie High School staff, students, and parents; and
5. Staff explore the potential adverse impacts, if any, on City Hall and Farmers' Market operations, and that mitigation and design elements be developed as appropriate; and
6. Mitigation and design elements address issues arising from bus traffic in the downtown while preserving adequate transit options for Milwaukie residents, and that the options be developed with participation of neighborhood representatives, residents, transit users, downtown business representatives, and City staff; and
7. Staff initiate appropriate action at the appropriate time with respect to amendment of the *Milwaukie Comprehensive Plan* and the *Milwaukie Downtown and Riverfront Land Use Framework Plan*; and
8. That the resolution be forwarded to the South Corridor Policy Committee for inclusion in a modified LPA and to TriMet for consideration in advancing project development plans and related land use applications since one of the recommendations regarding option 2.5 replace Southgate as a preferred site.

There was a lot of talk about the original charge to the Working Group. This matter was brought before the City Council four separate times at work session. If he remembered correctly at least two of those times consideration of other alternatives was a subject of the work session and one of the issues we talked about. This was not a group in which it is a fatal legal flaw to go outside the scope. If it were the Planning Commission, and they started hearing traffic cases, they cannot do that – they do not have the power. This group was requested as an ad hoc group to tackle an issue. They did tackle an issue. In respect to them, it was brought up a number of times during the process that they were looking at alternate sites. In fairness to the Working Group, that needed to be brought up. In terms of the actual resolution, he suggested language similar to what he just said.

Mr. Firestone added that the action should be by resolution, which would require a written document. He did not believe there was one available at this time. A possible action would be to adopt a motion that the action should be by resolution and that everything would be set out in a written document. Possible action would be to adopt a motion that sets the parameter of where the Council goes and directs staff to prepare a resolution. A motion was made and seconded that would not involve the adoption of a resolution. The City Council must decide whether to go through with that or withdraw it and direct a resolution be prepared so Council could look at the specific terms.

Councilor Barnes withdrew her earlier motion and moved that staff prepare a resolution for City Council to discuss to review specifics regarding the Kellogg Lake site.

Councilor Loomis withdrew his second.

Councilor Barnes moved to have staff prepare a resolution for the Milwaukie City Council to review specifics on the Kellogg Lake site. **Councilor Loomis** seconded the motion. Motion passed 3 – 2 with the following vote: Mayor Bernard, Councilor Loomis, and Councilor Barnes aye; Councilor Lancaster and Councilor Stone nay.

OTHER BUSINESS

Advisory Board Appointments

Mayor Bernard announced the appointment of **Mike Miller** to the Budget Committee; **Kathi Schroeder** to the Center/Community Advisory Board; and **Terrie Darling** to the Riverfront Board.

ADJOURNMENT

It was moved by Councilor Barnes and seconded by Councilor Loomis to adjourn the meeting. Motion passed unanimously.

Mayor Bernard adjourned the regular session at 8:40 p.m.

Pat DuVal, Recorder



To: Mayor Bernard and Milwaukie City Council
Through: Mike Swanson, City Manager
From: Larry R. Kanzler, Chief of Police
Date: September 20, 2004
Subject: O.L.C.C. Application – Duffy’s Irish Pub – 11050 S.E. 21st Avenue

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Duffy’s Irish Pub – 11050 S.E. 21st Avenue.

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel, Community Services Director

Subject: Extension of Current Garbage Franchises

Date: September 20, 2004

Action Requested

Approve a resolution extending the current franchises of the seven garbage collection companies for six months.

Background

The franchises held by the seven garbage service providers terminate on October 21, 2004. In anticipation of this date, City staff has taken the following action:

- In May of 2002, staff met with Council at a work session to discuss the existing solid waste franchise system and other systems that the City might consider as an alternative. Council stated their interest in maintaining the current franchise system in Milwaukie.
- In November of 2002, staff hired a survey firm to complete surveys of Milwaukie's commercial and residential garbage customers. The results of a random phone survey of 150 commercial customers showed 97% of those surveyed were satisfied with their garbage services. The results of a mail survey of residential customers (31% return rate) reflected a 93% satisfaction rate.
- In the summer of 2003, staff met with the seven garbage companies and presented a list of issues that City staff felt should be addressed in the new franchise agreement. Staff also asked the haulers if they wished to negotiate with the City directly or through a haulers' representative. The haulers identified David White, of the Oregon Refuse and Recycling Association, as their representative for the negotiations. In September of 2003, City staff and David White began meeting to design an agreement.

Negotiations have been productive and staff is confident that an agreement can be completed by the end of the year or early spring at the latest. Just to be safe, staff is requesting a six-month extension to the existing franchise.

Concurrence

The haulers' representative and the City Attorney have reviewed this resolution and concur with this request.

Fiscal Impact

None.

Work Load Impacts

None.

Alternatives

Do not approve this resolution and allow the current franchises to lapse.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE EXTENDING THE CURRENT FRANCHISES OF THE SEVEN FRANCHISED GARBAGE HAULERS FOR A SIX MONTH PERIOD AND AUTHORIZING THE CITY MANAGER TO SIGN AGREEMENTS TO THAT EFFECT.

WHEREAS, on May 3, 1994, the City Council adopted resolution No. 11-1994 that authorized the City to grant exclusive franchises to the following seven garbage haulers:

Clackamas Garbage Co. Inc.
Deines Brothers Sanitary Service
Mel Deines Sanitary Service, Inc.
Oak Grove Disposal Co.
Pearl Deines Disposal Co.
Waste Management of Oregon, Inc.
Wichita Sanitary Service; and,

WHEREAS, these are the same companies currently providing service to Milwaukie garbage customers; and

WHEREAS, these franchise agreements expire on October 21, 2004; and

WHEREAS, the City and the garbage haulers will require additional time to conclude franchise negotiations, and therefore provision must be made for an extension of the agreement to govern for a reasonable period following the expiration of the franchise agreement that would allow the completion of the negotiation process and the execution of a new agreement; now, therefore;

THE CITY OF MILWAUKIE DOES RESOLVE AS FOLLOWS:

Section 1. The solid waste franchises awarded under Resolution No. 11-1994 are extended for an additional six months through April 30, 2005, under the terms and conditions, other than the expiration date, set forth in Resolution No. 11-1994.

Section 2. The City Manager is authorized to sign agreements for the City as needed to effectuate the extension granted in Section 1.

Section 3: This resolution is effective upon adoption.

Adopted by City Council on _____ and signed by the Mayor on _____.

James Bernard, Mayor

ATTEST:

Approved As To Form:

Pat DuVal, City Recorder

Ramis, Crew, Corrigan and Bachrach



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Esther Gartner, IST Director
Stewart Taylor, Finance Director

Subject: Resolution – Transfer of Appropriations

Date: September 22, 2004 for October 5, 2004 City Council Meeting

Action Requested

Approve the resolution transferring appropriations from a contingency account to a capital expenditure account.

Background

The adopted budget for fiscal year 2004-2005 includes a Computer Reserve Fund that receives transfers from operating departments for future replacement and upgrades of computer equipment and programs. The fund was established to mitigate large outlays in a single year by spreading the costs over a longer period of time.

Expenditures in the Computer Reserve Fund were appropriated in a contingency account. Local budget law does not allow purchases to be made directly from a contingency account but does allow a City Council to pass a resolution or ordinance transferring the purchasing authority to an eligible expenditure account in the event purchases are needed that were unforeseen at the time budget was adopted.

The Information Services and Technology Department has identified several laptop computers and other equipment that need to be replaced in the current budget year. The proposed resolution would transfer contingency appropriations to a capital expenditure account in order to replace the equipment in the current budget year.

Concurrence

The City Manager, IST Director and Finance Director concur with the proposed resolution.

Fiscal Impact

The resolution transfers \$40,000 from contingency to capital outlays for the purchase of computer equipment.

Work Load Impacts

The resolution facilitates operations by replacing outdated and worn-out laptop computers.

Alternatives

1. Approve the resolution as proposed.
2. Modify the resolution.
3. Do not approve the resolution.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE,
OREGON TRANSFERRING APPROPRIATIONS FOR FISCAL YEAR 2004 -
2005**

WHEREAS, the adopted budget for fiscal year 2004-2005 includes a Computer Reserve Fund that receives transfers from operating departments for future replacement and upgrades of computer equipment and programs; and

WHEREAS, the fund was established to mitigate large outlays in a single year by spreading the costs over a longer period of time; and

WHEREAS, expenditures in the Computer Reserve Fund were appropriated in a contingency account; and

WHEREAS, local budget law does not allow purchases to be made directly from a contingency account but does allow a City Council to pass a resolution or ordinance transferring the purchasing authority to an eligible expenditure account in the event purchases are needed that were unforeseen at the time budget was adopted; and

WHEREAS, the Information Services and Technology Department has identified computer equipment that needs to be replaced in the current budget year; and

WHEREAS, the City Council desires to transfer contingency appropriations to capital outlays in order to make the purchases in the current budget year.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY
OF MILWAUKIE, OREGON:**

A transfer of appropriations in the Computer Reserve Fund is approved as follows:

From:	To:
Contingency	Capital Outlays
\$40,000	\$40,000

BE IT FURTHER RESOLVED that this resolution shall be effective immediately upon its passage.

Adopted by the City Council on October 5, 2004 and signed by the Mayor on
_____.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:

Pat DuVal, City Recorder

Ramis, Crew, Corrigan & Bachrach, LLP



To: Mayor & City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development & Public Works Director

From: John Gessner, Planning Director

Date: September 24, 2004 for the October 5, 2004 Council Meeting

Subject: Convert the Design & Landmarks Commission to a Committee

File No. ZA-04-02

Action Requested

Approve the attached ordinance that converts Design and Landmarks Commission to a committee and dissolves the Local Contract Review Board.

Background

The City Council has previously directed staff to proceed with code changes as needed to convert the Design and Landmarks Commission (DLC) to a Committee. On June 28, 2004, the DLC and Planning Commission conducted a joint work session to review proposed staff amendments. At that meeting the DLC and Planning Commission requested minor changes to the language. The Planning Commission directed staff to proceed subject to those changes.

On July 22, 2004, the DLC conducted a public hearing and accepted the revised amendments. On August 17, 2004 the City Council reviewed the proposed code changes, with no changes being requested. The Planning Commission conducted a public hearing on September 14, 2004 and forwarded a recommendation to the Council to approve the proposed code amendments. *(See the attached ordinance.)*

Key Features

The following describe the key features of the amendments:

1. Transfer the DLC's responsibilities and decision-making authority to the Planning Commission.
2. Specify that the Committee's role is to advise the Planning Commission on all matters over which the DLC previously had responsibility.
3. Require at least two joint meeting per year of the Committee and the Planning Commission for work program development and discussions on urban design, design review, and historic preservation.
4. Ensure that the Committee will have the opportunity to review applications prior to a Planning Commission decision.
5. Housekeeping amendments as necessary to implement required changes. This includes creating a new definition for "committee" and replacing references to the Design and Landmarks Commission.
6. The City Attorney has recommended a change to Milwaukie Municipal Code 2.10.010(J) by deleting the "Local Contract Review Board" as an independent board as part of this amendment package. The Council presently fills this function. Therefore, the designation of the board in the municipal code should be deleted.

Concurrence

The Planning Commission, Design and Landmarks Commission, City Attorney, Community Development and Public Works and Planning Directors concur with the proposal.

Fiscal Impact

The proposal will reduce potential future budgetary requests that would be necessary to support a Design and Landmarks Commission.

Workload Impacts

The proposal was precipitated by a need to reduce staff workload due to staff reductions in the Planning Department.

Alternatives

The Council has the following decision-making options.

1. Accept the code changes as written.
2. Direct staff to modify the code changes.

3. Reject the code changes.
4. Take no action.

ATTACHMENT

1. Adopting Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS TO CHAPTER 2.10 BOARDS AND COMMISSIONS GENERALLY;; CHAPTER 2.16 PLANNING COMMISSION; CHAPTER 2.18 DESIGN AND LANDMARKS COMMISSION; AND CHAPTER 19.323 HISTORIC PRESERVATION OVERLAY ZONE.

WHEREAS, the Design and Landmarks Commission conducted an advisory public hearing on July 22, 2004; and

WHEREAS, on the Planning Commission conducted a public hearing on September 14, 2004, in accordance with Milwaukie Municipal Code Chapter 19.900 and adopted a resolution recommending the City Council adopt the proposed code changes; and

WHEREAS, the City Council conducted a public hearing on October 5, 2004, in accordance with Milwaukie Municipal Code Chapter 19.900; and

WHEREAS, The code amendments implement the following:

1. Dissolution of the "local contract review board"; whose function is performed by the City Council.
2. New municipal code definition for "committee".
3. Dissolution of the Design and Landmarks Commission and creation of the Design and Landmarks Committee.
4. Transfer authority to administer Chapter 19.323 from the Community Development Director to the Planning Director.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. The amendments to the Milwaukie Municipal Code Chapter 2.10 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 2. The amendments to the Milwaukie Municipal Code Chapter 2.16 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 3. The amendments to the Milwaukie Municipal Code Chapter 2.18 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 4. The amendments to the Milwaukie Municipal Code Chapter 19.323 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 5: All changes to section citations and references required by adoption of the amendments are automatically adopted.

Section 6. Findings of fact and conclusions in support of these amendments as described in Exhibit 2 are hereby adopted.

Read for the first time on _____ and moved to a second reading by _____ vote of the City Council.

Read for the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

James Bernard, Mayor

ATTEST

APPROVED AS TO FORM
Ramis Crew Corrigan Baccrach,
LLP

Pat Duval, City Recorder

City Attorney

Ordinance No. _____

Exhibit 1¹

October 5, 2004

1. Amend Section 2.10.010 Applicability.

(Explanatory Note: No changes are made to 2.10.010 other than as shown below.)

D. Design and Landmarks ~~Commission~~ Committee (MMC 2.18)

~~J. Local contract review board (MMC 3.05 and ORS 279) (Ord. 1908 § 1, 2002; Ord. 1869 § 2, 2000; Ord. 1793 § 3 (part), 1996)~~

2. Amend Section 2.10.020 Definitions.

(Explanatory Note: This amendment adds the definition of "committee" to the municipal code.)

"Committee" means a public body other than a board or commission. Each committee has the authority and responsibility established for it by this code and by state law as applicable.

3. Amend Section 2.10.030 Board, Committee, and Commission Appointments.

D. Reappointments to a board, committee, or commission shall be considered in accordance with the guidelines listed in this section, together with the type of service the individual has already given to the board, committee, or commission and his/her stated willingness to continue. No person may serve more than two (2) successive terms on any board or commission unless there is an interval of at least one (1) term prior to the reappointment; provided, that the council may waive this limitation if it is in the public interest to do so.

E. Consideration should be given to residents outside the city when the board, committee or commission or function serves residents outside city boundaries.

F. No individual should be considered for appointment to a position on any board, committee, or commission where a conflict of interest may result. Board, committee, or commission members shall not participate in any ~~committee~~ proceeding or action in which any of the following has a direct or substantial financial interest: the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member; any business in which the member is serving or

¹

- Underlined text is to be inserted and ~~strike through~~ text to be deleted.
- Certain changes are also described by narrative without the use of strikeout or underlined text.
- There shall be no change to unmarked existing text and to any text that is not specifically included herein.
- "Explanatory notes" that appear in this exhibit do not amend the code.

has served within the previous two (2) years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential conflict of interest shall be disclosed at the meeting of the board or commission where the action is being taken.

- G. Board, committee, or commission vacancies are filled by appointment of the mayor with the consent of council. Appointments are made for terms not to exceed four (4) years and will expire the last day of March unless mandated otherwise by state statute. All board and committee members or commissioners shall serve without compensation.
- H. Individuals appointed to one (1) board or commission shall not serve on any other city board or commission during the term of their appointment. (Ord. 1810 § 1, 1996; Ord. 1793 § 3 (part), 1996)

4. Amend Section 2.10.040 Removal.

Members of a board, committee, or commission serve at the pleasure of the governing body. (Ord. 1793 § 3 (part), 1996)

5. Amend Section 2.10.050 Organization and operation.

- A. Bylaws. The council shall adopt bylaws for each board, committee, or commission's meetings and the performance of its duties. These bylaws shall be reviewed and updated annually by each board, committee or commission. Bylaw revisions shall be reviewed and accepted by the city council.
- B. Annual Work Plan. Each board, committee, or ~~and~~ commission shall prepare an annual work plan which will have elements of the city vision and city council goals. These work plans shall be discussed with an approved by the city council in a joint work session.
- C. Staff Support. The city will provide for necessary staff support for the board or commission including postage, meeting place, secretarial service and new member orientation and training.
- D. Meetings. Each board or commission should meet at least once each month and shall meet on the call of the chairperson or on call by a majority of its members. All meetings shall be subject to the requirements of ORS 192.610 to 192.690 (Open Meeting Law). A majority of the voting members shall constitute a quorum for the conduct of business and the concurrence of a majority of those members present shall be required to decide any matter. These meetings shall be an opportunity for public involvement in the discussion of issues relating to that particular board, committee, or commission. The provision of 2.010.050 (D) that requires monthly meetings shall not apply to the Design and Landmarks Committee. All other provisions of 2.010.050 (D) apply to the Design and Landmarks Committee.
- E. Authority to Bind. Neither a board, committee, or commission, as a whole, or any member or members individually or collectively, shall exercise authority to bind the city, its officers or agents to financial commitment or obligations. Any funding for projects must be budgeted by the council, and authorized

expenditures presented to the staff for payment. The city may enter into agreements with other public agencies, associations and individuals for services which will assist the board, committee, or commission.

- F. Annual Reports and Minutes. Each board or commission shall report on its activities in a work session with the city council at least annually. The written minutes for each board or commission shall be submitted to council for information.
- G. Ethics Law. Board, committee, and commission members appointed by the city are considered "public officials." As such, they are expected to abide by the Government Standards and Practices Laws of the State of Oregon currently codified as ORS 244.010 to 244.400.
- H. Boards, committees, and commissions may be asked to provide comments to other advisory bodies and staff when matters under consideration relate to their functional area of expertise. (Ord. 1793 § 3 (part), 1996)

6. Section 2.16.010 Established—Purpose, Planning Commission.

A. The planning commission is lawfully established for the purpose of reviewing and advising on matters of planning and zoning according to the provisions of the comprehensive plan, zoning ordinance, and other planning implementation documents. The commission shall be responsible for, but is not limited to, the following activities:

- A1. Keeping current the comprehensive plan and implementing ordinances for the city and urban growth boundary as applicable;
- B2. Preparing as necessary legislation that will implement the purposes of the comprehensive plan;
- C3. Recommending to the city council plans for regulating future growth, development and beautification of the city, and to review and recommend on regional issues and concerns;
- D4. Recommending and making suggestions to the council concerning;
 - 4a. The laying out, widening, extending, and locating of public thoroughfares, parking of vehicles and relief of traffic congestion,
 - 2b. Betterment of housing and sanitation conditions,
 - 3c. Establishment of districts for limiting the use, height, area, bulk, and other characteristics of buildings and structures related to land development,
 - 4d. Protection and assurance of access to incident solar radiation, and
 - 5e. Protection and assurance of access to wind for potential future electrical generation or mechanical application;
- E5. Recommending to the city council plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and

plans consistent with future growth and development of the city in order to secure to the city and its inhabitants' sanitation, proper service of public utilities and telecommunications utilities, including appropriate public incentives for overall energy conservation and harbor, shipping and transportation facilities;

~~F6.~~ Recommending to the city council plans for promotion, development and regulation of industrial and economic needs of the community with respect to business and industrial pursuits;

~~G7.~~ Considering and conducting public hearings on the comprehensive plans and zoning ordinances and similar matters which may include, but are not limited to, zone changes, condition uses, subdivisions and partitions;

~~H8.~~ Performing all other acts and things necessary to properly carry out the provisions of ORS Chapter 227 that are not specifically addressed by local ordinances and procedures;

9. The Commission shall be responsible for the following historic preservation activities:

- a. Carry out the duties described for it in this section and otherwise assist the City Council on historic preservation matters;
- b. Review and make recommendations on all partitions and subdivisions of historic properties designated in Comprehensive Plan Appendix 1- Historic Resources Property List;
- c. Disseminate information to educate the public as to state and federal laws protecting antiquities and historic places;
- d. Act as a coordinator for local preservation groups such as the Milwaukie Historical Society, educational workshops, signing and monumentation projects, and other similar programs;
- e. Assist the Milwaukie Historical Society in advising interest groups, agencies, boards, commissions and citizens on matters relating to historic preservation within the city;
- f. Review and make recommendation on all applications requesting designation or deletion of a landmark and placement or removal on the cultural resources inventory, as provided under Zoning Ordinance 19.323.5;
- h. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under Zoning Ordinance 19.323.5;
- i. Review all development, which proposes to alter a landmark, subject to the procedures and criteria set forth in this section;
- j. Review all demolition permits affecting landmarks, as provided under Zoning Ordinance 19.323.8;

- k. Review and make recommendation on all conditional use applications related to landmarks;
- l. Maintain an historic and cultural resources inventory and map of landmarks;
- m. Develop regulations for the protection of landmarks, such as design guidelines for adoption by the City Council.
- 10. Reviewing the historic resources element of the comprehensive plan;
- 11. Providing decisions and/or recommendations to the city council regarding compliance with applicable design guidelines for development projects subject to design review under the zoning ordinance;
- 12. Reviewing and recommending appropriate design guidelines and design review processes and procedures to the City Council; and.
- 13. Such other activities as the council may assign. (Ord. 1802 § 1 (part), 1996)

B. Coordination with the Design and Landmarks Committee

The Planning Commission shall meet at least twice annually with the Design and Landmarks Committee for reviewing prospective work program tasks related to urban design, architecture and design guidelines, historic preservation and other areas of responsibility assigned to the committee in 2.18.010 (A).

7. Amend Chapter 2.18.010 as follows

(Explanatory Note: Existing paragraphs 2.18.101(D) and 2.18.010(E) are retained.)

Established— Design and Landmarks Committee, Purpose , Appointment and Composition, Coordination with Planning Commission.

The design and landmarks commission is established for the following purposes:

- A. Assisting the city council on historic preservation matters defined in Section 323 of the zoning ordinance, specifically those duties and responsibilities described in Sections 323.4(B) and 323.5 of the zoning ordinance;
- B. Reviewing the historic resources element of the comprehensive plan;
- C. Providing decisions and/or recommendations to the planning commission and the city council regarding compliance with applicable design guidelines for development projects subject to design review under the zoning ordinance; and
- D. Review and recommend appropriate design guidelines and design review processes and procedures to the city council.
- A. The design and landmarks committee is established to advise the planning commission on all matters specified in 2.16.010(A)(9) through 2.16.010 (A)(12);
- B. Appointment and Composition. The Design and Landmarks Committee shall have five members appointed by the City Council for three-year terms. The City Council shall have discretion to reappoint or remove committee members. One

committee member shall have demonstrated special interest, experience, training or knowledge in the field of historic preservation or history. One committee members shall have demonstrated special interest, experience, training, or knowledge in the field of architecture, planning, landscape design or similar field; and.

C. Annual Meetings. The Design and Landmarks Committee shall meet with the Planning Commission in accordance with 2.16.010 (B).

8. Repeal Section 2.18.020 Membership--Qualifications.

9. Amend Section 2.18.030-020 Statement of economic interest.

~~Commissioners-~~ Committee members are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission. (Ord. 1799 § 2 (part), 1996)

10. Amend Chapter 19. 323.3 as follows:

- 323.3 (B) Commission. Means the City of Milwaukie ~~Design and Landmarks~~Planning Commission.
- 323.3 (C) Committee. Means the City of Milwaukie Design and Landmarks Committee.
(Explanatory Note: subsequent definition to be automatically adjusted due to the new subsection "C" being added.)
- Replace all instances of "Community Development Director" with "Planning Director" in Chapter 19.323.
- 323.3 (J) "Unrankable" means historic resources that lack sufficient information to be ranked. When that information is available, those found to be "Significant" or "Contributing" shall be recommended by the ~~design and landmarks commission~~ Planning Commission for designation as "Landmarks."
- Repeal Section 323.4 and renumber all subsequent sections.

11. Amend Chapter 19. 323.5 as follows

323.5 Process for Designation or Deletion of a Landmark.

- A. Application Request. The owner of record, contract purchaser, or an agent of any of the foregoing, of property within the city may make application for resource designation or deletion. The application shall be in such form and detail as the ~~community development~~planning director prescribes and will be the same as the major quasi-judicial review process of subsection 19.1011.4 of this title ~~_, substituting the design and landmarks commission for the planning commission.~~ The application shall be submitted to the ~~community development~~planning director. The

~~design and landmarks~~Planning Commission or the city council may also initiate such proceedings on their own motion.

- B. ~~Design and Landmarks~~Planning Commission. The Commission, ~~as described in subsection 19.323.4,~~ shall conduct a public hearing to evaluate the request. The commission shall enter findings and make a written recommendation to the city council.
- ~~C.~~ City Council. The city council shall conduct a public hearing to consider the recommendation of the ~~design and landmarks~~Planning Commission on the request and shall either approve, approve with conditions, or deny the request.

12. Amend Chapter 19.323.6 (D) as follows:

- D. Other Requests. All requests that do not meet the provisions of subsection C above shall be forwarded to the commission. The commission's decision will be final after notice and public hearing held the same as subsection 19.1011.3 of this title (Minor Quasi-Judicial Review), ~~substituting the design and landmarks commission for the planning commission.~~ The commission shall approve or disapprove issuance of the permit. The commission may attach conditions to the approval for permit which must be adhered to for the permit to remain valid.

13. Amend Chapter 19. 323.8 (C) as follows:

- C. Public Hearing Review. The commission shall hold a public hearing within forty-five days of application. The procedures shall be the same as those in subsection 19.1011.3, Minor Quasi-Judicial Review, ~~substituting the design and landmarks commission for the planning commission.~~

Ordinance No. _____

Exhibit 2

Findings of Fact and Conclusions

October 5, 2004

1. The City Council approved the staff proposal to convert the Design and Landmarks Commission to a committee of the Planning Commission due to staff reductions in the Planning Department.
2. The City Attorney advised the City Council to dissolve the local contract review board created under 2.10.010(I), as that function is performed by the City Council.
3. Advance consideration of the proposed amendments was made by the Design and Landmarks Commission, Planning Commission, and City Council at a number of public meetings.
4. Milwaukie Municipal Code Chapter 19.900 applies to proposed amendments of the Zoning Ordinance. The amendments contained in this ordinance are consistent with Chapter 19.900 as follows:²
 - a. The City Council initiated the amendments in accordance with 19.902.1 via direction to staff.
 - b. An application was prepared in accordance with Chapter 19.904.1(A) and public hearing was conducted by the Planning Commission in accordance with procedures specified in Chapter 19.1011.5.
 - c. The amendments have no substantive bearing on, or relationship to provisions or requirements the Metro Urban Growth Management Plan and Statewide Planning Goals. Accordingly, notice was not made to Metro or the Department of Land Conservation Development.
 - d. The reasons for the code amendments, which must be stated in accordance with Chapter 19.904.1(B), are contained in paragraphs 1 and 2 above.

² It has been determined that the following provisions do not apply to the adopted amendments: MMC 19.902.1(B) Notice to Metro; 19.905.1(B), 19.905.1(D), and 19.905.1(E) since the proposal does not affect development; and 19.905.1(C) as there are no directly applicable regional, state, or federal policies.

- e. The amendments have been coordinated with other provisions of the Municipal Code. There are no conflicts between the amendments and other code provisions.
- f. Chapter 19.905.1(A) requires that proposed amendments conform to applicable comprehensive plan goals, policies, and objectives; be consistent with the provisions of city ordinances, the Metro Urban Growth Management Functional Plan, and applicable regional policies. Comprehensive Plan Chapter 3 specifies policies for Historic Resources. There are no Comprehensive Plan policies that relate to or are affected by the conversion of the Design and Landmarks Commission to a committee. There are no directly applicable functional plan or other regional policies.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE BY ADOPTING CERTAIN TEXT AMENDMENTS TO CHAPTER 2.10 BOARDS AND COMMISSIONS GENERALLY; CHAPTER 2.16 PLANNING COMMISSION; CHAPTER 2.18 DESIGN AND LANDMARKS COMMISSION; AND CHAPTER 19.323 HISTORIC PRESERVATION OVERLAY ZONE.

WHEREAS, the Design and Landmarks Commission conducted an advisory public hearing on July 22, 2004; and

WHEREAS, the Planning Commission conducted a public hearing on September 14, 2004, in accordance with Milwaukie Municipal Code Chapter 19.900 and adopted a resolution recommending the City Council adopt the proposed code changes; and

WHEREAS, the City Council conducted a public hearing on October 5, 2004, in accordance with Milwaukie Municipal Code Chapter 19.900; and

WHEREAS, The code amendments implement the following:

1. Dissolution of the "local contract review board"; whose function is performed by the City Council.
2. New municipal code definition for "committee".
3. Dissolution of the Design and Landmarks Commission and creation of the Design and Landmarks Committee.
4. Transfer authority to administer Chapter 19.323 from the Community Development Director to the Planning Director.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. The amendments to the Milwaukie Municipal Code Chapter 2.10 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 2. The amendments to the Milwaukie Municipal Code Chapter 2.16 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 3. The amendments to the Milwaukie Municipal Code Chapter 2.18 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 4. The amendments to the Milwaukie Municipal Code Chapter 19.323 as described in Exhibit 1 are hereby adopted and incorporated into the Milwaukie Municipal Code.

Section 5: All changes to section citations and references required by adoption of the amendments are automatically adopted.

Section 6. Findings of fact and conclusions in support of these amendments as described in Exhibit 2 are hereby adopted.

Read for the first time on _____ and moved to a second reading by _____ vote of the City Council.

Read for the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

James Bernard, Mayor

ATTEST

APPROVED AS TO FORM
Ramis Crew Corrigan Baccrach,
LLP

Pat Duval, City Recorder

City Attorney

Ordinance No. _____

Exhibit 1¹

October 5, 2004

1. Amend Section 2.10.010 Applicability.

(Explanatory Note: No changes are made to 2.10.010 other than as shown below.)

D. Design and Landmarks Committee (MMC 2.18)

2. Amend Section 2.10.020 Definitions.

(Explanatory Note: This amendment adds the definition of "committee" to the municipal code.)

"Committee" means a public body other than a board or commission. Each committee has the authority and responsibility established for it by this code and by state law as applicable.

3. Amend Section 2.10.030 Board, Committee, and Commission Appointments.

- D. Reappointments to a board, committee, or commission shall be considered in accordance with the guidelines listed in this section, together with the type of service the individual has already given to the board, committee, or commission and his/her stated willingness to continue. No person may serve more than two (2) successive terms on any board or commission unless there is an interval of at least one (1) term prior to the reappointment; provided, that the council may waive this limitation if it is in the public interest to do so.
- E. Consideration should be given to residents outside the city when the board, committee or commission or function serves residents outside city boundaries.
- F. No individual should be considered for appointment to a position on any board, committee, or commission where a conflict of interest may result. Board, committee, or commission members shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member; any business in which the member is serving or has served within the previous two (2) years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential conflict of interest shall be disclosed at the meeting of the board or commission where the action is being taken.

¹

- a. There shall be no change to unmarked existing text and to any text that is not specifically included herein.
- b. "Explanatory notes" that appear in this exhibit do not amend the code.

- G. Board, committee, or commission vacancies are filled by appointment of the mayor with the consent of council. Appointments are made for terms not to exceed four (4) years and will expire the last day of March unless mandated otherwise by state statute. All board and committee members or commissioners shall serve without compensation.
- H. Individuals appointed to one (1) board or commission shall not serve on any other city board or commission during the term of their appointment. (Ord. 1810 § 1, 1996; Ord. 1793 § 3 (part), 1996)

4. Amend Section 2.10.040 Removal.

(Explanatory Note: "committee" is added)

Members of a board, committee, or commission serve at the pleasure of the governing body. (Ord. 1793 § 3 (part), 1996)

5. Amend Section 2.10.050 Organization and operation.

- A. Bylaws. The council shall adopt bylaws for each board, committee, or commission's meetings and the performance of its duties. These bylaws shall be reviewed and updated annually by each board, committee or commission. Bylaw revisions shall be reviewed and accepted by the city council.
- B. Annual Work Plan. Each board, committee, and commission shall prepare an annual work plan which will have elements of the city vision and city council goals. These work plans shall be discussed with an approved by the city council in a joint work session.
- C. Staff Support. The city will provide for necessary staff support for the board or commission including postage, meeting place, secretarial service and new member orientation and training.
- D. Meetings. Each board or commission should meet at least once each month and shall meet on the call of the chairperson or on call by a majority of its members. All meetings shall be subject to the requirements of ORS 192.610 to 192.690 (Open Meeting Law). A majority of the voting members shall constitute a quorum for the conduct of business and the concurrence of a majority of those members present shall be required to decide any matter. These meetings shall be an opportunity for public involvement in the discussion of issues relating to that particular board, committee, or commission. The provision of 2.010.050 (D) that requires monthly meetings shall not apply to the Design and Landmarks Committee. All other provisions of 2.010.050 (D) apply to the Design and Landmarks Committee.
- E. Authority to Bind. Neither a board, committee, or commission, as a whole, or any member or members individually or collectively, shall exercise authority to bind the city, its officers or agents to financial commitment or obligations. Any funding for projects must be budgeted by the council, and authorized expenditures presented to the staff for payment. The city may enter into agreements with other public agencies, associations and individuals for services which will assist the board, committee, or commission.

- F. Annual Reports and Minutes. Each board or commission shall report on its activities in a work session with the city council at least annually. The written minutes for each board or commission shall be submitted to council for information.
- G. Ethics Law. Board, committee, and commission members appointed by the city are considered "public officials." As such, they are expected to abide by the Government Standards and Practices Laws of the State of Oregon currently codified as ORS 244.010 to 244.400.
- H. Boards, committees, and commissions may be asked to provide comments to other advisory bodies and staff when matters under consideration relate to their functional area of expertise. (Ord. 1793 § 3 (part), 1996)

6. Section 2.16.010 Established—Purpose, Planning Commission.

- A. The planning commission is lawfully established for the purpose of reviewing and advising on matters of planning and zoning according to the provisions of the comprehensive plan, zoning ordinance, and other planning implementation documents. The commission shall be responsible for, but is not limited to, the following activities:
 - 1. Keeping current the comprehensive plan and implementing ordinances for the city and urban growth boundary as applicable;
 - 2. Preparing as necessary legislation that will implement the purposes of the comprehensive plan;
 - 3. Recommending to the city council plans for regulating future growth, development and beautification of the city, and to review and recommend on regional issues and concerns;
 - 4. Recommending and making suggestions to the council concerning;
 - a. The laying out, widening, extending, and locating of public thoroughfares, parking of vehicles and relief of traffic congestion,
 - b. Betterment of housing and sanitation conditions,
 - c. Establishment of districts for limiting the use, height, area, bulk, and other characteristics of buildings and structures related to land development,
 - d. Protection and assurance of access to incident solar radiation, and
 - e. Protection and assurance of access to wind for potential future electrical generation or mechanical application;
 - 5. Recommending to the city council plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants' sanitation, proper service of public utilities and telecommunications utilities, including appropriate

public incentives for overall energy conservation and harbor, shipping and transportation facilities;

6. Recommending to the city council plans for promotion, development and regulation of industrial and economic needs of the community with respect to business and industrial pursuits;
7. Considering and conducting public hearings on the comprehensive plans and zoning ordinances and similar matters which may include, but are not limited to, zone changes, condition uses, subdivisions and partitions;
8. Performing all other acts and things necessary to properly carry out the provisions of ORS Chapter 227 that are not specifically addressed by local ordinances and procedures;
9. The Commission shall be responsible for the following historic preservation activities:
 - a. Carry out the duties described for it in this section and otherwise assist the City Council on historic preservation matters;
 - b. Review and make recommendations on all partitions and subdivisions of historic properties designated in Comprehensive Plan Appendix 1- Historic Resources Property List;
 - c. Disseminate information to educate the public as to state and federal laws protecting antiquities and historic places;
 - d. Act as a coordinator for local preservation groups such as the Milwaukie Historical Society, educational workshops, signing and monumentation projects, and other similar programs;
 - e. Assist the Milwaukie Historical Society in advising interest groups, agencies, boards, commissions and citizens on matters relating to historic preservation within the city;
 - f. Review and make recommendation on all applications requesting designation or deletion of a landmark and placement or removal on the cultural resources inventory, as provided under Zoning Ordinance 19.323.5;
 - h. Review and make recommendation on all applications requesting designation or deletion of an historic district as provided under Zoning Ordinance 19.323.5;
 - i. Review all development, which proposes to alter a landmark, subject to the procedures and criteria set forth in this section;
 - j. Review all demolition permits affecting landmarks, as provided under Zoning Ordinance 19.323.8;
 - k. Review and make recommendation on all conditional use applications related to landmarks;
 - l. Maintain an historic and cultural resources inventory and map of landmarks;

- m. Develop regulations for the protection of landmarks, such as design guidelines for adoption by the City Council.
- 10. Reviewing the historic resources element of the comprehensive plan;
- 11. Providing decisions and/or recommendations to the city council regarding compliance with applicable design guidelines for development projects subject to design review under the zoning ordinance;
- 12. Reviewing and recommending appropriate design guidelines and design review processes and procedures to the City Council; and.13. Such other activities as the council may assign. (Ord. 1802 § 1 (part), 1996)
- B. Coordination with the Design and Landmarks Committee
The Planning Commission shall meet at least twice annually with the Design and Landmarks Committee for reviewing prospective work program tasks related to urban design, architecture and design guidelines, historic preservation and other areas of responsibility assigned to the committee in 2.18.010 (A).

7. Amend Chapter 2.18.010 as follows

(Explanatory Note: Existing paragraphs 2.18.101(D) and 2.18.010(E) are retained.)

Established— Design and Landmarks Committee, Purpose , Appointment and Composition, Coordination with Planning Commission.

- A. The design and landmarks committee is established to advise the planning commission on all matters specified in 2.16.010(A)(9) through 2.16.010 (A)(12);
- B. Appointment and Composition. The Design and Landmarks Committee shall have five members appointed by the City Council for three-year terms. The City Council shall have discretion to reappoint or remove committee members. One committee member shall have demonstrated special interest, experience, training or knowledge in the field of historic preservation or history. One committee members shall have demonstrated special interest, experience, training, or knowledge in the field of architecture, planning, landscape design or similar field; and.
- C. Annual Meetings. The Design and Landmarks Committee shall meet with the Planning Commission in accordance with 2.16.010 (B).

8. Repeal Section 2.18.020 Membership--Qualifications.9.

9. Amend Section 2.18.020 Statement of economic interest.

Committee members are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission. (Ord. 1799 § 2 (part), 1996)

10. Amend Chapter 19. 323.3 as follows:

- 323.3 (B) Commission. Means the City of Milwaukie Planning Commission.

- 323.3 (C) Committee. Means the City of Milwaukie Design and Landmarks Committee.
(Explanatory Note: subsequent definition to be automatically adjusted due to the new subsection "C" being added.)
- Replace all instances of "Community Development Director" with "Planning Director" in Chapter 19.323.
- 323.3 (J) "Unrankable" means historic resources that lack sufficient information to be ranked. When that information is available, those found to be "Significant" or "Contributing" shall be recommended by the Planning Commission for designation as "Landmarks."
- Repeal Section 323.4 and renumber all subsequent sections.

11. Amend Chapter 19. 323.5 as follows

323.5 Process for Designation or Deletion of a Landmark.

- A. Application Request. The owner of record, contract purchaser, or an agent of any of the foregoing, of property within the city may make application for resource designation or deletion. The application shall be in such form and detail as the planning director prescribes and will be the same as the major quasi-judicial review process of subsection 19.1011.4 of this title. . The application shall be submitted to the planning director. The Planning Commission or the city council may also initiate such proceedings on their own motion.
- B. Planning Commission. The Commission shall conduct a public hearing to evaluate the request. The commission shall enter findings and make a written recommendation to the city council.

City Council. The city council shall conduct a public hearing to consider the recommendation of the Planning Commission on the request and shall either approve, approve with conditions, or deny the request.

12. Amend Chapter 19.323.6 (D) as follows:

- D. Other Requests. All requests that do not meet the provisions of subsection C above shall be forwarded to the commission. The commission's decision will be final after notice and public hearing held the same as subsection 19.1011.3 of this title (Minor Quasi-Judicial Review). The commission shall approve or disapprove issuance of the permit. The commission may attach conditions to the approval for permit which must be adhered to for the permit to remain valid.

13 Amend Chapter 19. 323.8 (C) as follows:

- C. Public Hearing Review. The commission shall hold a public hearing within forty-five days of application. The procedures shall be the same as those in subsection 19.1011.3, Minor Quasi-Judicial Review.

Ordinance No. _____

Exhibit 2

Findings of Fact and Conclusions

October 5, 2004

1. The City Council approved the staff proposal to convert the Design and Landmarks Commission to a committee of the Planning Commission due to staff reductions in the Planning Department.
2. The City Attorney advised the City Council to dissolve the local contract review board created under 2.10.010(I), as that function is performed by the City Council.
3. Advance consideration of the proposed amendments was made by the Design and Landmarks Commission, Planning Commission, and City Council at a number of public meetings.
4. Milwaukie Municipal Code Chapter 19.900 applies to proposed amendments of the Zoning Ordinance. The amendments contained in this ordinance are consistent with Chapter 19.900 as follows:²
 - a. The City Council initiated the amendments in accordance with 19.902.1 via direction to staff.
 - b. An application was prepared in accordance with Chapter 19.904.1(A) and public hearing was conducted by the Planning Commission in accordance with procedures specified in Chapter 19.1011.5.
 - c. The amendments have no substantive bearing on, or relationship to provisions or requirements the Metro Urban Growth Management Plan and Statewide Planning Goals. Accordingly, notice was not made to Metro or the Department of Land Conservation Development.
 - d. The reasons for the code amendments, which must be stated in accordance with Chapter 19.904.1(B), are contained in paragraphs 1 and 2 above.

² It has been determined that the following provisions do not apply to the adopted amendments: MMC 19.902.1(B) Notice to Metro; 19.905.1(B), 19.905.1(D), and 19.905.1(E) since the proposal does not affect development; and 19.905.1(C) as there are no directly applicable regional, state, or federal policies.

- e. The amendments have been coordinated with other provisions of the Municipal Code. There are no conflicts between the amendments and other code provisions.
- f. Chapter 19.905.1(A) requires that proposed amendments conform to applicable comprehensive plan goals, policies, and objectives; be consistent with the provisions of city ordinances, the Metro Urban Growth Management Functional Plan, and applicable regional policies. Comprehensive Plan Chapter 3 specifies policies for Historic Resources. There are no Comprehensive Plan policies that relate to or are affected by the conversion of the Design and Landmarks Commission to a committee. There are no directly applicable functional plan or other regional policies.



To: Mayor and City Council

Through: Mike Swanson, City Manager
Alice Rouyer, Community Development and Public Works Director

From: Paul Shirey, Engineering Director
Brion Barnett, Civil Engineer

Subject: Recommended Changes to System Development Charges for Transportation.

Date: September 9, 2004, for October 5, 2004 City Council Meeting

Action Requested

Adopt the attached Final Report for the Transportation System Development Charges Rate Study and Methodology (Attachment A), for the purpose of establishing system development charges for transportation improvement projects. In particular, the Council is adopting the capital improvement project plan, the amount of the charges, and the methodology used to set the amount of the charges.

Staff recommends opening the hearing on this matter on October 5, considering testimony of staff, the consultant, and the public. The public hearing would be continued to the regular Council meeting on November 2, at which time Council could entertain further testimony and then vote on the recommendation. The continuance will add another 30 days notice for the public to review the new methodology (published September 3, 2004).

Background

System Development Charges (SDC) are one-time fees paid by new development (and redevelopment) to pay governments for capital costs of public facilities that are needed to serve new development and the people who occupy or use new development. SDCs are a means for development to pay for the impacts it creates and to ensure that facilities needed to support new development are built within a reasonable time frame without decreasing the level of service for existing residents of a community.

The City's existing transportation SDC rates and methodology were adopted by resolution in 1998. Periodic evaluation of the rates and methodology is necessary because the SDCs are primarily tied to growth and development within the City. The City contracted with a consultant, Henderson Young & Company, to evaluate the City's existing Transportation SDC rates and methodology to determine whether any changes are needed.

A. Existing Program

The existing SDC program includes every proposed street capital improvement in the Transportation System Plan (TSP). Many of these projects are either outdated, no longer needed, or have been completed. The current methodology results in all city street projects being allocated a 17% share of total cost eligible for SDC funding. There is no indication of why projects were selected and it does not include an adjustment, commonly applied in this type of SDC, for so-called "pass-by" trips. The current program only assesses new development for an improvement fee and does not include a reimbursement fee (see attached Rate Study, Exhibit A).

As a result of these types of shortcomings in the existing program, the City is: a) collecting less SDC revenue than it would otherwise be entitled to; and b) unable to tap SDC revenue for street projects unless 83% of the total cost is available from other sources. This has meant that Milwaukie's SDC for transportation is not able to meet its intended purpose of providing additional street capacity to accommodate growth.

B. Proposed Program

Establishing qualifying criteria for SDC eligibility is the first step in the new methodology. The proposed program includes minimum qualifications and a set of qualifying criteria. Minimum qualifications are that the project cannot be for maintenance (SDCs can only be used to provide new capacity), cannot be used for equipment or rolling stock, and must include a component that adds capacity to the transportation system. Projects can provide capacity in one or more modes of travel: streets, transit, bicycle, pedestrian and combined bike/pedestrian.

If a project meets these basic qualifications, it must also *enhance mobility* (five ways to do this described in Attachment A, page 8) and/or *reduce congestion* (four ways to do this described in Attachment A, page 8). Projects that meet these criteria are considered to be eligible for SDC funding because they add new capacity to the transportation system by enhancing the movement of automobiles, trucks, buses, railcars, and/or pedestrians. See Table 3-1 on pages 10-11 of Attachment A for a complete list of SDC-eligible capital projects developed by staff.

Calculating transportation SDCs for the new program involves the following steps.

1. Identify capital improvement projects that are needed to serve new development.
2. Determine the portion of the cost of the project that is not eligible for the SDC (because it is paid by other revenues to cover costs such as existing deficiencies or through traffic).
3. Use a traffic model to forecast the number of new trips that will be generated.
4. Calculate the cost per new trip by dividing the costs that are eligible for SDCs (from steps 1 and 2, above) by the number of new trips (from step 3).
5. Quantify the impacts of various types of new development by calculating the number of new trips that are generated by various types of land use. The trip generation data is adjusted to account for the number of trips that are part of another trip (i.e., stopping at a store on the way home from work).
6. Calculate the SDC rate for each type of land use: multiply the cost per new trip (from step 4) times the number of trips (from step 5).

C. Results of New Program Methodology

Six projects are eligible for reimbursement fee SDCs, totaling \$465,893. Because the reimbursement fee is, in effect, paying the City back for capacity built into projects already constructed, the funds may be applied toward any future street capital project.

Twenty-two projects are eligible for improvement fee SDCs totaling \$9,736,302. As the City collects new SDC revenues, those funds will be applied to this set of improvement projects. In all cases, SDC revenue requires a match of other revenue to fully fund the project since none of the eligible projects are considered 100% “new capacity” projects.

The SDC rates for the new program are somewhat higher than the current rates. This is strictly a function of the number of projects and the proportionate cost attributable to new capacity. The old program has many more projects, but only 17% of the cost of all the projects is capacity enhancing. For example, the new program cost per trip is \$1,512 compared to the current cost of \$1,340. Under the proposed program, a new single-family home is \$1,481 compared to \$1,340

under the current program. The new SDC charge for a 50,000-square-foot light industrial building is \$74,050 versus \$67,000 under the current program.

Concurrence

The Community Development, Planning, and Engineering Departments, along with City's legal counsel, all support adopting the resolution. Staff and the consultant presented the proposed methodology and rates to the Citizens Utility Advisory Board (CUAB) at their regular meeting held September 8, 2004. The CUAB unanimously endorsed/approved the proposed SDC methodology and rates. Public notice of the proposed amendments to transportation SDC methodology and rates was made on August 20, 2004. The proposed methodology and rates were made available to the public on September 3, 2004. To date, City staff has not received any public comments.

Fiscal Impact

The existing transportation SDC fund balance is \$644,733. With the new proposed methodology, the City would be able to recoup approximately \$466,000 for projects previously constructed (reimbursement fee projects).

The existing transportation SDC for a single-family, detached house is approximately \$1,340. The SDC for this same use would be approximately \$1,481 (a 10.5% increase) with the new methodology. The increased fees would be borne by new development only. The SDC is a one-time payment due at the issuance of a building permit.

Work Load Impacts

None.

Alternatives

The Council has the following alternatives:

- Adopt the resolution (Attachment A).
- Adopted a modified version of the resolution.
- Don't adopt the resolution.

Attachment

- A. Resolution (including the Transportation SDC Rate Study and Methodology Final Report)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
ESTABLISHING NEW SYSTEM DEVELOPMENT CHARGES FOR
TRANSPORTATION IMPROVEMENTS, AS AUTHORIZED BY MMC CHAPTER
13.28.**

WHEREAS, MMC Chapter 13.28 authorizes the City of Milwaukie to establish system development charges for capital improvements, and Section 13.28.030.A defines “capital improvements” to mean facilities or assets used for transportation; and

WHEREAS, MMC Section 13.28.040.B requires that system development charges be established by a resolution that sets the amount of the charge, the type of the permit to which the charge applies, and the methodology used to set the amount of the charge; and,

WHEREAS, MMC 13.28.080 requires the city to adopt a project plan for the system development charges listing capital improvements that may be funded by the system development charges and the estimated costs and time of construction for each improvement; and

WHEREAS, the City has previously adopted and has in place a Transportation System Development Charge (“SDC”); and

WHEREAS, changes in transportation planning and development make it advisable to update the Transportation SDC methodology; and

WHEREAS, no person has requested notice of changes in the City’s SDCs or SDC methodology; and

WHEREAS, the methodology was available to the public on September 3, 2004, at least 60 days prior to the public hearing; and

WHEREAS, the City Council held a public hearing on the proposed SDCs and methodology on October 5, 2004, after publishing notice of the hearing in the Clackamas Review on August 25, 2004; and

WHEREAS, Henderson, Young & Company has prepared a Transportation System Development Charges Rate Study and Methodology Final Report (“Final Report”) intended to satisfy the code requirements for establishing system development charges and attached as Exhibit 1 to this resolution; and

WHEREAS, the Final Report includes the required capital improvement project plan as required by MMC 13.28.080, the amount of the charge as required by MMC

13.28.040.B, and the methodology used to set the amount of the charge as required by MMC 13.28.040.B and 13.28.050;

NOW, THEREFORE, BE IT RESOLVED by the City Council of Milwaukie:

Section 1: The Council adopts the Final Report by Henderson, Young & Company of the Transportation System Development Charges Rate Study and Methodology, dated August 30, 2004 (Exhibit 1), for the purpose of establishing system development charges for transportation improvement projects. In particular, the Council is adopting the capital improvement project plan, the amount of the charges, and the methodology used to set the amount of the charges, included in the Final Report, as required by the provisions of MMC 13.28.

Section 2: Transportation system development charges will be payable upon the issuance of a building permit or the issuance of a development permit for development not requiring the issuance of a building permit.

Section 3: The resolution takes effect upon adoption.

Introduced and adopted by the City Council of the City of Milwaukie, Oregon on October 5, 2004.

James Bernard, Mayor

APPROVED AS TO FORM:
Ramis Crew Corrigan & Bachrach, LLP

ATTEST:

By: _____
City Attorney

Pat DuVal, City Recorder

G:\muni\Milwaukie\transportation SDC res.doc

TRANSPORTATION
SYSTEM DEVELOPMENT CHARGES
RATE STUDY AND METHODOLOGY

FOR
MILWAUKIE, OREGON

Henderson,
Young &
Company

FINAL REPORT
August 30, 2004

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	LEGAL REQUIREMENTS AND ISSUES AFFECTING SDC CALCULATIONS	2
3.	TRANSPORTATION CAPITAL IMPROVEMENT PROGRAM FOR SDCS.....	7
4.	METHODOLOGY	12

LIST OF TABLES

3-1: CAPITAL IMPROVEMENT PROGRAM FOR SYSTEM DEVELOPMENT CHARGES	10
4-1: GROWTH IN TRIPS	13
4-2: COST PER NEW TRIP	13
4-3: TRIP GENERATION RATES AND SDC RATE SCHEDULE	16

1. INTRODUCTION

The purpose of this study is to establish the rates for system development charges (SDCs) for transportation facilities in the City of Milwaukie, Oregon.

System development charges are one-time fees paid by new development to pay governments for capital costs of public facilities that are needed to serve new development and the people who occupy or use the new development.

Local governments charge SDCs for several reasons:

- To obtain revenue to pay for some of the cost of new public facilities.
- To implement a public policy that new development should pay a portion of the cost of facilities that it requires, and that existing development should not pay all of the cost of such facilities.
- To assure that public facilities will be constructed within a reasonable time period in order to achieve and maintain local standards for new development without decreasing the level of service for existing residents and businesses.
- To provide predictability to developers and builders about the type, timing, and amount of development fees required by local governments.

This rate study presents the system development charges for transportation facilities in the City of Milwaukie. The rate study includes:

1. This introduction
2. Summary of legal requirements and issues that affect the calculation of SDC rates in Oregon.
3. Transportation capital improvement program listing projects that are the basis of the SDC rates.
4. Rate schedule of transportation SDCs for various types of development.

2. LEGAL REQUIREMENTS AND ISSUES AFFECTING SDC CALCULATIONS

OREGON SYSTEMS DEVELOPMENT ACT

In 1989, the State of Oregon adopted the Oregon Systems Development Act (ORS 223.297 - 223.314) to “provide a uniform framework for the imposition of system development charges by local governments.” The statutes outline the types of charges that are considered to be System Development Charges (SDCs) and impose a variety of requirements on governments that impose SDCs. The ORS provisions that directly affect the calculation of the SDC rates require the City of Milwaukie to:

1. Adopt a capital improvement program (to designate capital improvements that can be funded with SDCs).
2. Set forth a methodology for the SDC (to establish rate-making principles and costs).
3. Calculate the SDC as a “reimbursement” fee, or an “improvement” fee, or a combination of both:
 - a. “Reimbursement” fees are based on the costs (including carrying costs) associated with capital improvements which are already constructed or are under construction provided that “excess” capacity is available to accommodate growth.
 - b. “Improvement” fees are based on the costs of capital improvements that increase capacity available for new development. SDCs may not be used for the construction of administrative office facilities.

EQUITABLE SHARES AMONG IMPACTS OF DEVELOPMENT

There are several ways to fulfill the objective (ORS 223.304(1)) that future system users contribute no more than an equitable share of the cost of public facilities, including:

1. DEMAND (IMPACTS)

Demands placed on public facilities vary among different types of development. The City of Milwaukie transportation SDC is based on the number of trips generated on the transportation system by each type of development. Each type of development generates a different number of trips per square foot of development (i.e., fast food restaurants generate more trips per square foot than a traditional

restaurant).

Local government system development charge rate studies are based on a “standard” impact on public facilities created by “typical” development of different types. Milwaukie’s SDC is based on trip generation rates reported nationally by the Institute of Transportation Engineers (ITE). Milwaukie’s SDC ordinance could be amended to enable developers to submit data and analysis to demonstrate that the impacts of their proposed development are less than the ITE-reported impacts used in this rate study. In order for the City to accept alternative (reduced) impacts, they must be permanent and enforceable (i.e., through land use restrictions, deed restrictions, lease terms, etc.).

2. BENEFIT CRITERIA

Benefit criteria include personal use and use by others in the family or business enterprise (direct benefit), use by persons or organizations who provide goods or services to the fee-paying property (indirect benefit), and geographical proximity (presumed benefit).

Although direct benefits are “stronger” than indirect benefits, and both are “stronger” than presumed benefits, all three types indicate some benefit is received by the development, thus contributing to the “proportionality” between benefits received and SDCs paid.

The City of Milwaukie’s transportation SDC is based on the number of trips generated on the transportation system by each type of development. The trips generated by a development include some direct benefit trips, some indirect benefit trips and some trips with presumed benefits. Each trip, regardless of benefit type, constitutes a unit of demand (impact) on the system, thus each development’s total trip count quantifies the impact of that development. By basing the SDC on the number of trips, the SDC is proportional to the impacts generated and benefits received by the development.

3. LEVELS OF SERVICE

Standards for levels of service provide objective and equitable measures of the capacity of public facilities that are needed to serve each unit of development (i.e., each house, person, or square foot of development). The capacity required to achieve the standard is then compared to the existing inventory to determine the need for new facilities (or the reserve capacity of existing facilities).

The City of Milwaukie determines its needs for transportation facilities by reviewing additions to capacity of the transportation system, including enhancement of mobility and reduction of congestion.

4. SIZE OF DEVELOPMENT

System development charges are typically charged on the basis of the size of the development (i.e., number of dwelling units, or number of square feet of development).

Milwaukie's SDC rate schedule lists the SDC amount per unit of development (i.e., dwelling unit or square foot). The size of each proposed development is multiplied times the SDC rate per unit to determine the total SDC for that development.

5. SERVICE AREAS

Service areas, zones or other districts can be used to define the geographical relationship between development and the public facilities that are impacted by the development.

The use of service areas or "zones" for system development charges depends on the type of public facility and the size of the jurisdiction in which the system development charge is being imposed. There is no need for zones for public facilities that serve the entire City (i.e., arterial roads). Zones are appropriate for public facilities that serve small areas (i.e., a neighborhood park in a large city).

Considering the continuity and connected character of the transportation network in the City of Milwaukie, system development charges can be collected and expended on a City-wide basis (there is no need for SDC zones in Milwaukie).

REDUCTIONS OF SYSTEM DEVELOPMENT CHARGE AMOUNTS

System development charges cannot "double dip" (i.e., they need to take into account the payment by the new development of other fees, taxes, etc. that the government uses to pay for the capital cost of public facilities). These other revenues are accounted for by subtracting them from the cost of capital improvement projects that are attributable to SDCs. The adjustment includes only the taxes, fees, etc. that are earmarked for or proratable to the same capital improvements that are the basis for the system development charge.

In the past, Milwaukie has used Street Fund gas taxes and grants to pay for a portion of its transportation improvement projects. Milwaukie's SDCs take into account future use of Street Fund gas taxes and grants by subtracting commitments for those revenues from the cost of projects in the Transportation SDC Capital Improvement Program (see Chapter 2).

A developer who contributes land, improvements or other assets receives a "credit" which reduces the amount of system development charge that is due (MMC 13.28.120). Milwaukie may establish reasonable conditions affecting these credits.

For example, the location of dedicated land and the quality and design of a donated public facility can be required to conform to the City's adopted local standards for such facilities. Furthermore, the contributions for which credits are given must be for the same public facilities for which the system development charges are being imposed. This credit is in addition to the adjustment for payments of other revenues described in the preceding paragraph.

TIMING OF PAYMENT OF SYSTEM DEVELOPMENT CHARGES

Milwaukie's SDC ordinance authorizes collection of the SDC at the time a building permit is issued, or the issuance of a development permit for development not requiring the issuance of a building permit (MMC 13.28.090).

USES OF SYSTEM DEVELOPMENT CHARGE REVENUE

System development charge revenue can be used for the capital cost of public facilities. SDCs cannot be used for operating or maintenance expenses. The cost of capital facilities that can be paid for by system development charges are specified in Milwaukie's SDC ordinance (MMC 13.28.060). In general SDCs can pay for costs of preparing for and constructing transportation facilities, including planning, design, land acquisition, construction, financing, and costs of complying with provisions of ORS regarding SDCs.

System development charges can be imposed for new public facilities which benefit new development. SDCs can also be charged to reimburse the government for the unused capacity of existing public facilities that benefit new development. SDCs that recover the costs of existing unused capacity should be based on the government's actual cost, rather than the replacement cost of the facility. Carrying costs may be added to reflect the government's actual or imputed interest expense. The "reimbursement" fee will take effect in Milwaukie when new transportation capital improvements (see Chapter 2) are completed, but they have "reserve" capacity to serve additional development.

RECEIPT AND EXPENDITURE OF SYSTEM DEVELOPMENT CHARGES

System development charge revenues will be deposited into separate accounts of the City of Milwaukie, and the City will prepare annual reports describing all revenue and expenditures (MMC 13.28.130). System development charge payments that are not expended within 10 years from receipt will be refunded (on the premise that if they cannot be expended in a reasonable time, they were probably not "needed" nor did they contribute to achieving and maintaining an adequate transportation system for new development).

RESPONSIBILITY FOR PUBLIC FACILITIES

System development charges are collected by local governments in conjunction with approval of applications to develop property. Most frequently, the system development charges are for public facilities that are owned by the local government that imposes the SDC. Local governments do not impose system development charges for private facilities, but they may collect system development charges for public facilities they do not administer if such facilities are owned or operated by other public (government) entities.

3. TRANSPORTATION CAPITAL IMPROVEMENT PROGRAM FOR SDCs

Oregon's System Development Act requires that system development charges be based on an adopted capital improvement program (CIP). This chapter of the rate study presents the City's Transportation SDC capital improvement program. Adoption of this rate study by the City of Milwaukie, and adoption of the SDC ordinance that incorporates this rate study by reference constitute adoption of this Transportation SDC capital improvement program by the City for the purpose of calculating SDCs.

CRITERIA FOR PROJECTS TO BE ELIGIBLE FOR TRANSPORTATION SDCs

The City of Milwaukie used criteria¹ to identify transportation capital improvement projects that are eligible for Transportation SDCs. The criteria was developed to ensure "equitable shares" (see Chapter 1). The City used the following criteria:

A. Minimum Qualifications

In order to be eligible for transportation SDCs, a project must meet all three of the following criteria:

- Project is not a maintenance project.
- Project is not for purchase of equipment or rolling stock.
- Project includes a component that adds capacity to the transportation system.

Projects can provide capacity in one or more modes of travel: roads, transit, bicycle, pedestrian, and combined bicycle and pedestrian projects. Relative to "bikeways" type projects, dedicated bike lanes add capacity, but a wide shared lane (14-16 feet) used by both vehicle and bike modes does not add capacity.

B. Qualifying Criteria

In addition to the minimum qualifications, a project is eligible for transportation SDCs only if it also meets one or more of the following criteria:

1. Project enhances mobility.
 - a. Improve pedestrian and bicycle facilities (reduces reliance on automobile usage by increasing access to alternate modes of travel)

¹ The City of Portland has used criteria (rather than volume/capacity ratios) for its transportation SDC since 1997.

- b. Improve access to activity centers (i.e., Marketplace, Historic Downtown, 42nd and King, North Industrial Center, North Clackamas Aquatic Center, or Clackamas Town Center). Curb extension type intersection improvements that improve functioning of intersections would improve access to activity centers by promoting a more pedestrian friendly environment.
 - c. Improve connectivity
 - d. Improve transit speed, reliability, and/or connections between activity centers and neighborhoods (reduces reliance on automobile usage by increasing access to alternate modes of travel). Overlay projects are assumed to improve transit speed and reliability.
 - e. Pedestrian/bicycle/transit volumes served
2. Project reduces congestion.
- a. Improve levels of service on City arterial and collector roads and streets
 - b. Improve traffic flow
 - c. Reduce turning movement conflicts
 - d. Ensure access to intermodal terminals and related distribution facilities (i.e., rail-truck interchange in North Industrial Area).

Projects that meet these criteria are considered to be eligible for SDC funding because they add new capacity to the transportation system by enhancing the movement of automobiles, trucks, motorcycles, buses, railcars and/or pedestrians.

PROJECT LIST

The City of Milwaukie use the criteria described above to evaluate many potential transportation improvement projects. The City identified 28 transportation improvement projects that are eligible for SDC funding². The total cost of these projects is approximately \$25.6 million. The list of capital improvement projects is presented in Table 3-1. For each project, the list shows:

- Project #, Street Name and limits (“From” and “To”) or names of streets forming intersections.
- Project Description: type of improvement(s).
- Criteria: adds capacity, enhances mobility, and/or reduces congestion.

² The City has a longer list of needed transportation improvements, such as those listed in the Transportation System Plan. This study is limited to those projects that are eligible for SDC funding.

- Total Cost: estimated total cost of project.
- Allocation of total costs between ineligible and eligible costs (described in the next chapter).

The list of transportation improvement projects in Table 3-1 contains two sections. The first section (projects 1-6) are projects that have been completed and have the capacity to serve additional traffic, therefore they are eligible for “reimbursement fees” as authorized by ORS. The second section (projects 7-28) are future projects, therefore they are eligible for “improvements fees” authorized by law. The list also contains the previous and current SDC rate studies, as allowed by law.

Table 3-1
Capital Improvement Program for System Development Charges

Project	Description	Adds Capacity	Enhances Mobility	Reduces Congestion	Total Cost	Ineligible Cost	Cost Eligible for SDC
Reimbursement Fee Projects							
1. 42nd (Olsen St.- Harvey Street), Harvey St. (42nd Ave. - 40th.)	Curb, sidewalk, and storm improvements	√	√	√	155,263	121,857	33,406
2. Johnson Creek Blvd. - 32nd to 45th	multi-modal	√	√		2,953,000	2,793,100	159,900
3. Olsen 32nd to 42nd	Curb, sidewalk, and storm improvements	√	√		124,161	64,161	60,000
4. Roswell, 32nd to 42nd	Curb, sidewalk, and storm improvements	√	√		329,000	195,300	133,700
5. Stanley, King to Railroad	Curb, sidewalk, and storm improvements	√	√		117,827	51,970	65,857
6. 1998 Transp. SDC Project	Rate study				13,030	0	13,030
Subtotal: Reimbursement Projects					3,692,281	3,226,388	465,893
Improvement Fee Projects							
7. 42nd Ave. Street Improvements (JCB - Olsen St)	Multi-Modal	√	√		391,000	270,000	121,000
8. CDBG - King Rd Improvements (37th-42nd Ave)	Street/Storm	√	√		227,120	181,900	45,220
9. CDBG - 37th Ave Improvements (Harvey - King Rd.)	Street/Storm	√	√		200,400	160,500	39,900
10. CDBG - 40th Ave. Improvements (Harvey - King Rd.)	Street/Storm	√	√		200,400	160,500	39,900
11. CDBG - Oak St. Improvements (Campbell St. - Railroad Ave/Monore St.)	Street/Sidewalk	√	√		33,400	26,750	6,650
12. CDBG - 37th Ave. Improvements (Railroad Ave. to just south of RR Tracks, approx. 75 feet)	Sidewalk	√	√		6,680	5,350	1,330

Project	Description	Adds Capacity	Enhances Mobility	Reduces Congestion	Total Cost	Ineligible Cost	Cost Eligible for SDC
13. Match for Springwater Corridor Three Bridges Project	Bike/Trail	√	√		2,440,000	2,411,300	28,700
14. McLoughlin Blvd. Improvements Project	Multi-Modal	√	√	√	4,100,000	3,883,000	217,000
15. 21st Avenue Extension Project	Street/Sidewalk/ Pedestrian	√	√		415,000	0	415,000
16. 37th Avenue Sidewalks	Walkway	√	√		30,000	0	30,000
17. Lake Road Multimodal Improvements (21st Ave to E. City Limits)	Multi-modal	√	√	√	4,663,000	3,000,000	1,663,000
18. King Road & 43rd Ave	Traffic Signal	√	√	√	200,000	98,400	101,600
19. Stanley, King to Railroad	Curb, sidewalk, and storm improvements	√	√		511,441	0	511,441
20. 2004 Transp. SDC Project	Rate study				24,999	0	24,999
21. CDBG Projects 04/06. 36th Ave. Improvements (Harvey - King)	Street/Storm	√	√		201,800	0	201,800
22. Lewellyn St - Franklin St Improv	Street/Storm	√	√		125,000	0	125,000
23. STSP - Cedercrest Drive Sidewalks	Walkways	√	√		52,000	0	52,000
24. STSP - Logus Road Street Improvements	Street/Strom	√	√		1,750,000	525,000	1,225,000
25. Railroad Ave. Multi-Modal/ Reconstruction	Multi-modal	√	√	√	4,000,000	1,200,000	2,800,000
26. Monroe Street Reconstruction	Multi-modal	√	√		1,800,000	540,000	1,260,000
27. Howe Street and 43rd Ave.	Curb and sidewalk	√	√		400,000	200,000	200,000
28. Harrison & 42nd Ave	Traffic signal	√	√		160,762	0	160,762
Subtotal: Improvement Projects					21,933,002	12,662,700	9,270,302
Combined Total: Reimbursements plus Improvements					25,625,283	15,889,088	9,736,195

4. METHODOLOGY

This chapter of the rate study contains the rate making principles, costs and data to calculate transportation SDCs for the City of Milwaukie. The chapter begins with an overview of how the SDC rates are calculated. The balance of the chapter presents the formulas, variables, data, and rate schedule for transportation SDCs.

OVERVIEW OF SDC CALCULATIONS

Transportation SDCs for the City of Milwaukie are calculated using the following steps.

1. Identify capital improvement projects that are needed to serve new development.
2. Determine the portion of the cost of the project that is not eligible for the SDC (because it is paid by other revenues to cover costs such as existing deficiencies or through traffic).
3. Use a traffic model to forecast the number of new trips that will be generated.
4. Calculate the cost per new trip by dividing the costs that are eligible for SDCs (from steps 1 and 2, above) by the number of new trips (from step 3).
5. Quantify the impacts of various types of new development by calculating the number of new trips that are generated by various types of land use. The trip generation data is adjusted to account for the number of trips that are part of another trip (i.e., stopping at a store on the way home from work).
6. Calculate the SDC rate for each type of land use: multiply the cost per new trip (from step 4) times the number of trips (from step 5).

CAPITAL IMPROVEMENT PROJECTS NEEDED FOR NEW DEVELOPMENT

Chapter 3 describes the City's process for identifying capital improvement projects needed to serve new development. The projects are listed in Table 3-1.

ELIGIBLE PORTION OF COST OF EACH PROJECT

SDCs cannot be charged for the portion of project costs that are paid by other revenues, such as Street Fund gas taxes or grants. Those revenues pay for the portion of project costs that are not eligible for SDCs, such as deficiencies that existed before the SDC program was initiated, or through traffic that travels through the City without stopping. Table 3-1 identifies ineligible and eligible costs.

NEW TRIPS GENERATED BY EACH MODE OF TRAVEL

New trips on the transportation network are primarily caused by growth in population and employment. The City's traffic model uses the number of employees and households to predict the number of trips that will be generated on the transportation network. Table 4-1 shows the number of trips in 1997 and 2015, and the growth in trips forecast for 18 years. These trip data are obtained from Milwaukie's traffic model.³ The growth in trips from Table 4-1 are used to calculate cost per trip (as described in the next section).

Table 4-1
Growth in Trips

Trip Type	1997	2015	18 Year Growth
P.M. Peak Hour Trips	14,865	21,306	6,441

COST PER NEW TRIP

The cost per new trip is calculated by dividing the costs that are eligible for SDCs (from steps 1 and 2, above) by the number of new trips (from step 3), as follows:

$$\text{Cost per growth trip} = \frac{\text{(Total cost eligible for SDC)}}{\text{(Growth in p.m. peak hour trips)}} = \frac{\text{-----}}{\text{-----}}$$

Table 4-2 shows the calculations of cost per growth trip for reimbursement fees and improvement fees.

Table 4-2
Cost per New Trip

Category of CIP Projects	SDC CIP Eligible Cost	Growth Trips	Cost per Growth Trip
Reimbursement (completed)	\$ 465,893	6,441	\$ 72.33
Improvement (future)	9,270,302	6,441	1,439.17

³ Data were provided by Falconi Consulting Services, using historical data from the Transportation System Plan, and forecasting growth at 2% per year.

TRIPS GENERATED BY VARIOUS TYPES OF DEVELOPMENT

SDC rates vary according to the impact on the transportation network caused by each type of development. The impacts are measured in “trips.” Trip generation rates for each land use type are derived from the Institute of Transportation’s (ITE) report *Trip Generation* (7th Edition, 2003). The ITE rates used in this SDC study are expressed as vehicle trips entering and leaving a property during the peak travel period in the afternoon and evening (4-6 p.m.) which is called the “p.m. peak” trip rate.

The trip generation data is adjusted to account for the number of trips that are part of another trip (i.e., stopping at a store on the way home from work). For some land uses (e.g., retail), a substantial amount of this traffic is already passing-by the property and merely interrupts a trip between two other locations. These pass-by trips do not add to the impact on the surrounding street system because the trip would occur without the interruption. As a result, pass-by trips are subtracted from the total trips generated by each type of land use. The remaining trips are considered “new” to the street system and are therefore subject to the system development charge calculation. The pass-by trip percentages are derived from ITE’s *Trip Generation Handbook* (2001).

ITE trip rates, and adjustments for new trips are presented in Table 4-3. The table lists the most frequently used land use types from ITE’s *Trip Generation*, and the following information is presented in separate columns:

- Land Uses: major categories of land use for which ITE has reports of trip generation.
- P.M. Peak Vehicle Trips per Unit: the number of trips during the p.m. peak travel period as reported by ITE for one unit of measure.
- New Trip %: the percent of trips that are new (excludes “pass-by” trips).
- Net New Trips per Unit: the number of new trips during the p.m. peak travel period (excluding pass-by trips) for one unit of measure.
- Unit of Measure: the unit that generates the number of trips (i.e., residential development counts trips per dwelling, schools count trips per student, most commercial establishments count trips per 1,000 square feet).

The data described above is used in combination with costs per trip to calculate the SDC rates, as described in the following section.

SDC RATES FOR EACH TYPE OF DEVELOPMENT

The SDC rate for each type of land use is calculated by multiplying the number of trips times the cost per new trip, as follows:

$$SDC_{lu} = (\text{cost per motorized trip}) \times (\text{p.m. peak hour new trips/unit})_{lu}$$

Where lu = land use category

The cost per trip is from Table 4-2 and is repeated in the appropriate column headings of Table 4-3, and the number of trips generated by the new development is shown in Table 4-3 for a variety of land use categories.

The SDC rates are calculated as dollars per unit of development for a variety of land use categories (as defined in ITE's *Trip Generation*).

The result of these calculations appear in the "Reimbursement" and "Improvement" columns of the SDC Rate Schedule, Table 4-3.

COMBINED RATES FOR REIMBURSEMENT AND IMPROVEMENT SDCs

The combined SDC rates for each type of land use is the total of the reimbursement SDC and the improvement SDC. Earlier steps were performed separately for reimbursement fees and improvement fees, producing an SDC for each type of fee (for each land use). The final step in preparing the SDC rate schedule is to add the SDCs for both types. The result is the composite SDC for each type of development shown in the last column of Table 4-3.

Table 4-3
Trip Generation Rates and SDC Rate Schedule

ITE Code	ITE Land Use Category	PM Peak Trip Rate ⁴	% New Trips ⁵	Net New Trips per	Unit of Measure	Reimbursement Projects SDC @ \$ 72.33	Improvement Projects SDC @ \$ 1,439.17	Combined Reimbursement and Future Improvement
110	Light Industrial	0.98	100%	0.98	1,000 sq ft	71	1,410	1,481
140	Manufacturing	0.74	100%	0.74	1,000 sq ft	54	1,065	1,119
151	Mini-warehouse	0.26	100%	0.26	1,000 sq ft	19	374	393
210	Single family detached house	1.01	100%	1.01	dwelling	73	1,454	1,527
220	Apartment	0.62	100%	0.62	dwelling	45	892	937
230	Condominium/townhouse	0.52	100%	0.52	dwelling	38	748	786
240	Mobile home	0.59	100%	0.59	dwelling	43	849	892
251	Senior adult housing-detached	0.26	100%	0.26	dwelling	19	374	393
252	Senior adult housing-attached	0.11	100%	0.11	dwelling	8	158	166
253	Congregate care facility	0.17	100%	0.17	dwelling	12	245	257
254	Assisted living	0.22	100%	0.22	dwelling	16	317	333
310	Hotel	0.59	100%	0.59	room	43	849	892
320	Motel	0.47	100%	0.47	room	34	676	710
420	Marina	0.19	100%	0.19	berth	14	273	287
430	Golf course	0.30	100%	0.30	acre	22	432	453
440	Adult cabaret	38.67	100%	38.67	1,000 sq ft	2,797	55,653	58,449
441	Live theater	0.02	100%	0.02	seat	1	29	30
443	Movie theater without matinee	0.07	100%	0.07	seat	5	101	106
445	Multiplex movie theater	5.22	100%	5.22	1,000 sq ft	378	7,512	7,890
522	Middle/junior high school	1.19	100%	1.19	1,000 sq ft	86	1,713	1,799
530	High school	0.97	100%	0.97	1,000 sq ft	70	1,396	1,466
560	Church	0.66	100%	0.66	1,000 sq ft	48	950	998

⁴ Trip Generation 7th Edition, ITE, 2003. Trip generation rates are weekday p.m. peak hour (4-6 pm)

⁵ Trip Generation Handbook, ITE, 2001. New trip % is the reciprocal of “pass-by trips” in ITE.

ITE Code	ITE Land Use Category	PM Peak Trip Rate ⁴	% New Trips ⁵	Net New Trips per	Unit of Measure	Reimbursement Projects SDC @ \$ 72.33	Improvement Projects SDC @ \$ 1,439.17	Combined Reimbursement and Future Improvement
565	Day care center	13.18	100%	13.18	1,000 sq ft	953	18,968	19,921
610	Hospital	1.18	100%	1.18	1,000 sq ft	85	1,698	1,784
620	Nursing home	0.22	100%	0.22	bed	16	317	333
710	Office	1.49	100%	1.49	1,000 sq ft	108	2,144	2,252
720	Medical office	3.72	100%	3.72	1,000 sq ft	269	5,354	5,623
730	Government office	1.21	100%	1.21	1,000 sq ft	88	1,741	1,829
760	R&D Center	1.08	100%	1.08	1,000 sq ft	78	1,554	1,632
812	Building materials & lumber	4.49	100%	4.49	1,000 sq ft	325	6,462	6,787
814	Specialty retail	2.71	100%	2.71	1,000 sq ft	196	3,900	4,096
820	Shopping center	3.75	66%	2.48	1,000 sq ft	179	3,562	3,741
850	Supermarket	10.45	64%	6.69	1,000 sq ft	484	9,625	10,109
851	Convenience market-24 hr	52.41	39%	20.44	1,000 sq ft	1,478	29,416	30,895
890	Furniture store	0.46	47%	0.22	1,000 sq ft	16	311	327
896	Video rental	13.60	100%	13.60	1,000 sq ft	984	19,573	20,556
911	Bank/savings: walk-in	33.15	100%	33.15	1,000 sq ft	2,398	47,708	50,106
912	Bank/savings: drive-in	45.74	53%	24.24	1,000 sq ft	1,753	34,889	36,642
931	Quality restaurant	7.49	56%	4.19	1,000 sq ft	303	6,036	6,340
932	Restaurant: sit-down	10.92	57%	6.22	1,000 sq ft	450	8,958	9,408
933	Fast food, no drive-through	26.15	50%	13.08	1,000 sq ft	946	18,817	19,763
934	Fast food, with drive-through	34.64	50%	17.32	1,000 sq ft	1,253	24,926	26,179
936	Drinking place	11.34	100%	11.34	1,000 sq ft	820	16,320	17,140
943	Auto parts & service center	4.46	57%	2.54	1,000 sq ft	184	3,659	3,843
944	Service station	13.86	58%	8.04	vfp ⁶	581	11,569	12,151
947	Self-service car wash	5.54	100%	5.54	wash stall	401	7,973	8,374
948	Automated car wash	14.12	100%	14.12	1,000 sq ft	1,021	20,321	21,342

⁶ vfp = vehicle fueling position



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: JoAnn Herrigel

Subject: Agreement with Clackamas Cable Access Board

Date: August 20, 2004

Action Requested

Authorize the City Manager to sign a personal services agreement with the Clackamas Cable Access Board (CCAB) to manage and operate Milwaukie's Public and Government Access programs. Provide staff with input as to which Public Access program option, proposed by the CCAB, Council prefers.

Background

The City of Milwaukie has had a Public access program and studio for over twenty years. Public access programming can be produced by anyone who lives or works in Milwaukie and program content is unrestricted except by law. The Milwaukie Public Access station at Lake Rd. has been operated by the CCAB (which does business as Willamette Falls TV) since January 2003. The term of their current contract expires on September 30, 2004.

The Government Access program, or the production and broadcast of City Council and other City meetings, is currently operated by Richard Beck of Videobeck under a City purchase order. In addition to Council meetings, government access programming includes a video bulletin board, maintained by City staff, which posts public notices and other information.

In July 2004 Milwaukie staff advertised a request for proposals (RFP) for an operator (or operators) for both the Public and Government access programs. The RFP allowed respondents to bid on operation of either the public or the

government access programs, or both, if they chose. The RFP stated that the term of these responsibilities would terminate on June 30, 2005 with the possibility of being extended for one-year terms up to five years in succession, ending June 30, 2010.

By the deadline of August 6, three submittals were received. Two proposals bid on operating only the Public access program and the third bid on operating both the Government and Public access programs. These three proposals were reviewed by a group of three staff people and one city resident. This review committee determined that, of the three proposals received, the one which bid on both the public and government access programs was the most complete and provided the best options for the City. This proposal was submitted by the Clackamas Cable Access Board.

Based on the input from the review group, staff is recommending that Council authorize the City Manager to sign a Personal Services Agreement with the CCAB for operation of both the public and government access programs. Under CCAB operation, the Government access program would operate veritabily the same way as it does now but would benefit from 24 hour monitoring by CCAB staff at their Oregon City site. (Currently, the Government channel is monitored only by viewers and troubleshooting is done only when viewers call in).

The CCAB proposal provided two options for the operation of the public access program. Following are brief descriptions of each:

- 1) The CCAB would continue to run the Lake Rd facility just as they do now, with CCAB staff placed at the facility 20 hours a week. The Lake Rd facility is owned by the Fire District and is used by the City at no rent in exchange for 30 hours a month of videography support. CCAB staff would continue to provide support to the Fire District staff to meet the City's commitment.
- 2) The City would close the Lake Rd facility and the CCAB would provide services to Milwaukie users at the CCAB's facility in Oregon City. This option also includes an offer to establish "equipment check out" services at one or two sites in Milwaukie (the Library and the Senior Center are suggested).

The CCAB's second option is motivated by the fact that the Lake Rd facility currently gets very little use. Attempts to increase the number of users have been unsuccessful. What the Lake Rd facility needs is a wildly enthusiastic over- achiever with great technical and administrative skills. Unfortunately, the current funding available for a studio operator drastically narrows the pool of suitable respondents to RFPs such as this.

By closing the Lake Rd facility the City would:

- Save \$3,000 a year on utilities at the facility
- Save \$5,000 a year in office supplies
- Save \$3,000 a year paid to the Fire District toward emergency capital expenses, like roof repair
- Be released from its commitment to the Fire District for videography support (note: the District has moved its headquarters to Oregon City and mostly uses that facility now, anyway)

The downside of closing the facility, of course, is that once it's gone, it's gone.

If Council concurs with the recommendation that the city contract with the CCAB for operation of both the Government and Public access programs, staff would request Council's guidance on which option to pursue with respect to Public access program operation.

Concurrence

This agreement has been reviewed by the City attorney and the City Manager. The Budget Committee approved the budget for the Public access studio and forwarded it to Council assuming the CCCAB would operate the facility for up to \$30,000 and that at least \$10,000 would be expended for the Government access program in fiscal year 2004-05.

Fiscal Impact

The current fiscal year budget contains adequate funding to operate the Lake Rd facility for this fiscal year at the proposed hours and to operate the Government Channel at \$10,000 for the year. Option #2 above would save the City at least \$11,000.

Work Load Impacts

None

Alternatives

Deny the City Manager authority to sign an intergovernmental agreement with the CCAB and request that staff reject all proposals for the recent RFP and advertise the RFP again.

Clackamas Cable Access Board
proposal for
Management and Operation of Milwaukie Public
Access Studio Facility and Equipment

Part I - Description of Organization: Clackamas Cable Access Board (CCAB) is an intergovernmental agreement between the cities of West Linn and Oregon City. CCAB was formed in 1984 for the purpose of pooling resources to operate a Public Access television studio serving the three cities. We also provide service to residents of unincorporated Clackamas County under a flat fee service agreement. We have operated the Milwaukie public access program for the last year. Due to some confusion between the Clackamas area and the fact that we served only the member cities, the CCAB does business and operates our studio as Willamette Falls Television (WFTV). Our studio is located at 709 Main Street, Oregon City.

WFTV has a two camera studio, three tape-to-tape cuts only editing suites, an A-B roll tape-to-tape editing suite with a Trinity video system, a dpsVelocity professional grade digital editing machine, and two AVIO digital editing machines. We added a Final Cut Pro editing system in the last year. Our studio control room can also be used as an A-B roll editing suite. All of our tape-to-tape suites are S-VHS or VHS, and are equipped with tape decks that can feed mini-DV, DV, or DVCAM tapes into the editing machines. Free classes are provided on all equipment.

Checkout equipment includes Panasonic AG-450 and AG-456 S-VHS camcorders, Sony DSR-PDX10 mini-DV camcorders, plus various support equipment such as microphones, tripods, camera platforms, lights, and monitors. We also have a portable production switcher with built in monitors, VCR's, an audio preamp, and a Panasonic MX-50 switcher. We originate programming for three channels, with partial control on two others. Programming is controlled by a Leightronix TCD/IP controller via a Knox Chameleon 64x8 routing switcher. We have capacity on this system to originate Milwaukie's programming.

The CCAB consists of two members from each city, plus one member selected by the Board who may live anywhere in Clackamas County. The Board meets on the second Monday of each month at WFTV. Clackamas County has a representative who attends the meetings and can voice

opinions and concerns, but does not have a vote. The Board sets policy, and does much of the direct management of the facility. Paid employees include the Studio Manager, Melody Ashford, a Studio Engineer, an Administrative Assistant, Studio Assistant, and a Production Assistant. The Engineer and Assistants report to the Studio Manager, who reports to the Board via Personnel officer Marvin Fourier. Bookkeeping is contracted to US Bookkeeping, and annual audits are performed in accordance with state law.

Part II - System Concept and Solution: CCAB proposes that Milwaukie Cable Access continue as a sub-studio of Willamette Falls Television, known as WFTV-Milwaukie. We propose operating with the existing equipment. The studio on Lake road is currently open from noon to 8pm Monday and Tuesday, and from 5pm to 9pm Wednesday and Friday. Two employees split the hours. The employees are responsible for keeping the facility clean. The employees who provide this service also work at WFTV Oregon City, allowing for good communication. These employees report to the WFTV Studio Manager. Engineering services are supplied by the WFTV Studio Engineer, with an additional 100 hours per year budgeted over his current hours.

The operating rules are the same as that of the WFTV-Oregon City studio (see attached), with the mission being to provide training and equipment for the users to create their own shows. Milwaukie residents can use the Milwaukie or Oregon City studios, and check out equipment from either facility. WFTV users from either facility are eligible to use the other, so that Clackamas County users who live close to Milwaukie can use that facility instead of Oregon City.

Publicity and outreach for the two studios are partially combined. Information on the Milwaukie studio is on our Web site, and information is included in our newsletter. We do regular items for City newsletters, and do visits to schools, senior centers, and community organizations. An additional 4 hours per week is in the WFTV-Milwaukie budget to allow for Milwaukie specific activity, to be scheduled at the discretion of the City and the WFTV-Milwaukie operator.

Part III – Program: CCAB offers two proposals for the Public Access, both of which are possible with existing funds:

Public Access Alternative 1 (Existing program)

CCAB will provide employees to keep the Lake Road facility open on a half time basis. These employees will assist users, schedule and accomplish playback of programming, clean the facility, and assist the fire department as needed during the open hours of the facility. The employees may, as time allows, teach classes in using the equipment at the facility. The employees have four hours per week that can be scheduled as needed for outreach activities. The employees will schedule use of the facility, and keep detailed records of usage and programming. The employees will notify the Engineer if anything needs repair. The employees will evaluate the needs of the Lake Road facility, and research and propose needed capital expenditures. The employees will attend CCAB meetings on the second Monday of each month to keep the board apprised of the Milwaukie operations. Minutes of all Board meetings, plus quarterly reports of programming, training, programs submitted, and hours of equipment usage will be provided to the City along with the annual audit report.

Milwaukie users, including Fire District 1, have full privileges at WFTV-Oregon City. They may use the facilities during normal hours of operation, which vary, with days and hours reduced during the summer due to lack of demand. The Fire Department has moved its headquarters to Oregon City, and mostly uses that facility.

Public Access Alternative Program 2

Milwaukie's studio is still getting very little use, and probably does not justify the cost of keeping it open. WFTV therefore proposes the following:

1. Close the studio building at Fire District One on Lake Road
2. Set up video editing systems at Ledding Library and Milwaukie Senior Center. Regular hours at each site will be established for WFTV personnel to lend assistance.
3. Move equipment checkout functions to WFTV Oregon City. Users may make appointments to pick up the gear at the above sites from our employee.
4. Move playback function to either WFTV Oregon City or Milwaukie City Hall. Our employees would still do programming.
5. Use employee hours to assist producers in the field, do PSA productions, etc. Employees will help producers until they become competent, but will not do the whole program for them.
6. Existing studio equipment may be possibly used to create or enhance a program opportunity at the Middle School. Classes will be scheduled at the Milwaukie locations as needed.

Benefits to Milwaukie:

- ❖ Relieves the City of rent and obligation to FD1.
- ❖ Goes where the people are.
- ❖ Boost utilization of their equipment.
- ❖ Better outreach to population.

Benefits to WFTV:

- ❖ Frees our employees from obligations to FD1.
- ❖ More checkout gear available at WFTV OC.

Elements of both programs can be combined at the discretion of the Milwaukie Cable Access Board as long as the number of employee hours does not exceed 24 hours per week for the operating personnel.

Government Access

CCAB will provide videographers for up to three meetings per month. CCAB employees will coordinate the playback schedule, operate the system, and have a list of employees available to call for dealing with playback errors.

CCAB is planning a major upgrade of our program transmission system to digital fiber optic equipment this year, using capitol funds from Oregon City that have just become available. CCAB has sufficient capacity to originate all Milwaukie programming from our Oregon City facility, should the City so desire. If the City wishes to upgrade its existing gear, our Engineer will assist in the selection and installation of equipment.

Part IV – Program Management Structure: The WFTV Studio Manager will be in overall charge of the operation of both studios. The employee will attend CCAB meetings on the second Monday of each month to keep the board informed about Milwaukie operations.

The Facil management software in use at WFTV will be linked to the Milwaukie studio. All reservations and programming schedules will be done using Facil. This will allow timely reports on usage and programming to be produced. CCAB will provide the software for this system.

Part V – Prior Experience: The CCAB has operated a public access studio in Oregon City for 20 years. Three of the current Board members have been on the board for over 10 years. Melody Ashford has managed WFTV for 8 years, and was in another position with WFTV prior to that for a total of 14 years. She also has an independent video production company. Our Studio Engineer, Steve Johnson, has a degree in Television Technology, and was the engineer for the Clackamas Community College A/V department from the time he graduated until he retired in 2002. He also ran the TCI Cable access system for over 10 years.

The senior person assigned to operate the Milwaukie studio, Studio Assistant Steve Tarantoia, has extensive experience in video production, winning awards for some of his work for Clackamas County. The other person assigned, Carl Jacob, is our Production Assistant. His primary duties are janitorial, and he is an Access producer himself. Our Administrative Assistant, Deb Graham, has been with the CCAB for several years, has been to training on the Facit system, and is an excellent Powerpoint slide composer.

Part VI – Authorized Negotiator :

Marvin Fourier, Board Treasurer,
709 Main Street, Oregon City, OR 97045
email: marvfour@comcast.net cell: 503-784-0810

Part VII – Budget:

PROGRAM AREA	MONTHLY AMOUNT	BUDGET AMOUNT
Public Access Operation	\$2,500/mo (\$30K/yr)	\$22,500 for 9 months
Government Access Operation	\$833/mo	\$7,500 for 9 months
Total to operate October 1, 2004 to June 30, 2005		\$30,000

** Office supplies and utilities paid directly by City of Milwaukie

This proposal is valid and binding on Clackamas Cable Access Board for 90 days from the date of submission.

Marvin W. Fourier, authorized negotiator, Clackamas Cable Access Board

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE,
OREGON RECOMMENDING THE TILLAMOOK BRANCH LIGHT RAIL
ALIGNMENT AND ALTERNATIVE 2.5 (KELLOGG LAKE) TRANSIT CENTER
SITE**

WHEREAS, the on-street Milwaukie Transit Center adjacent to City Hall was designated as the temporary transit center in the early 1980s; and

WHEREAS, the Metropolitan Service District (herein Metro), the Tri-County Metropolitan Transportation District of Oregon (herein TriMet), and the City of Milwaukie (herein City) have been involved in examining transportation options in the South Corridor; and

WHEREAS, an environmental impact statement was prepared and public comment was heard; and

WHEREAS, the South Corridor Project Locally Preferred Alternative Report (herein Report) adopted by the Metro Council on April 17, 2003 designated “the I-205 Light Rail Project” as “Phase 1” of the South Corridor Project, including, among other things, “relocation of the existing on-street Milwaukie transit center to the Southgate area pending resolution of design and environmental issues;” and

WHEREAS, the Report designated a Portland to Milwaukie light rail alignment as “Phase 2” of the South Corridor Project, including designation of the “Southgate Crossover Design Option” as the preferred design option within the North Milwaukie Industrial District; and

WHEREAS, the City Planning Commission and City Council requested that a working group be designated to examine issues related to the Southgate Crossover Design Option and Southgate Transit Center location; and

WHEREAS, a process was initiated, and the alignment and transit center site designations were examined, refined, and analyzed by the Working Group, which consisted of North Milwaukie Industrial District representatives, members of the City’s neighborhood associations, downtown representatives, and other interested stakeholders; and

WHEREAS, the Working Group recommended selection of the Tillamook Branch Design Option as its preferred light rail design option and a site west of and contiguous to Kellogg Lake (Alternative 2.5) as the preferred location for a transit center; and

WHEREAS, the new transit center would be constructed in two phases to address near-term replacement of the on-street transit center to be followed by the addition of light rail and a structured park-and-ride lot; and

WHEREAS, the Milwaukie Planning Commission conducted public hearings on February 24, 2004, March 9, 2004, and April 8, 2004 and adopted the recommendations of the Working Group; and

WHEREAS, the City Council conducted hearings on the Planning Commission recommendation on May 18, 2004, May 25, 2004, and June 21, 2004, whereupon, after hearing from those in attendance and wishing to speak, public input was closed, and Council deliberations were scheduled for September 21, 2004; and

WHEREAS, on September 21, 2004 the City Council elected to recommend to Metro and TriMet that the Tillamook Branch Design Option be designated as the City's preferred light rail design option and that the existing on-street Milwaukie Transit Center be relocated to the site designated as Alternative 2.5 (Kellogg Lake); and

WHEREAS, environmental analyses will be required and additional public comment will be solicited prior to amendment of the Report; and

WHEREAS, the City Council wishes its recommendations to be known to future decision makers who will be considering alignment and related decisions.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Milwaukie, Oregon, that:

1. The Tillamook Branch Design Option light rail alignment through the North Milwaukie Industrial District is recommended to be designated in place of the Main Street and crossover alignment within the South Corridor Project as the preferred alternative;
2. The environmental studies required to amend the Report consistent with the recommendations contained in this Resolution be done;
3. Alternative 2.5 (Kellogg Lake) is recommended to replace Southgate as the preferred site for relocation of the existing on-street Milwaukie Transit Center, including the following mitigation and design considerations and direction to City staff as part of the continued project development process:
 - a. Mitigation and design elements related to the transit center relocation address adverse traffic impacts within the Milwaukie Historic and Ardenwald/Johnson Creek neighborhoods, and that the elements be developed with participation of neighborhood representatives and residents and City staff; and

- b. Mitigation and design elements, including but not limited to architecture, noise containment, landscaping, and lighting, address adverse impacts on the homes adjacent to Kellogg Lake and/or in close proximity to the recommended site, and that the elements be developed with participation of homeowners and/or residents and City staff; and
 - c. Mitigation and design elements address environmental concerns, including the loss of open space and potential environmental impacts on Kellogg Lake and adjacent properties, that open space enhancements be created where possible, and that the elements be developed with participation of the City's Riverfront Board, Parks and Recreation Board, interested citizens, and City staff; and
 - d. Mitigation and design features address law enforcement and public safety concerns, and that the features be developed with participation of the Milwaukie Police Department, neighboring residents, and Milwaukie High School staff, students, and parents; and
 - e. Staff explore the potential adverse impacts, if any, on City Hall and Farmers' Market operations, and that mitigation and design elements be developed as appropriate; and
 - f. Mitigation and design elements address issues arising from bus traffic in the downtown while preserving adequate transit options for Milwaukie residents, and that the options be developed with participation of neighborhood representatives, residents, transit users, downtown business representatives, and City staff; and
 - g. Staff initiate appropriate action at the appropriate time with respect to amendment of the *Milwaukie Comprehensive Plan* and the *Milwaukie Downtown and Riverfront Land Use Framework Plan*.
- 4. Development of the transit facilities be coordinated with other projects in central Milwaukie as schedules allow in order to minimize impacts, reduce costs, and achieve the best civic designs, consistent with the *Milwaukie Downtown and Riverfront Land Use Framework Plan*.
 - 5. Staff submit a monthly written activity report to the Council at its second meeting of the month with respect to the above recommendations and mitigation and design initiatives; and
 - 6. A copy of this resolution and recommendation be forwarded to the South Corridor Policy Committee for consideration in a modified LPA and to TriMet for consideration in advancing project development plans.

Introduced and adopted by the City Council on _____.

This resolution is effective upon adoption.

James Bernard, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP

Pat DuVal, City Recorder

City Attorney

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, AUGUST 10, 2004

COMMISSIONERS PRESENT

Donald Hammang, Chair
Judith Borden, Vice Chair
Teresa Bresaw
Brent Carter
Jeff Klein

STAFF PRESENT

John Gessner,
Planning Director
Keith Jones,
Associate Planer
John Pinkstaff,
Legal Counsel
Shirley Richardson,
Hearings Reporter

COMMISSIONERS ABSENT

Howard Steward

1.0 CALL TO ORDER

The meeting was called to order at 6:32 p.m. **John Gessner** introduced Jeff Klein, the new commissioner.

2.0 PROCEDURAL QUESTIONS - None.

3.0 CONSENT AGENDA - July 13, 2004

Commissioner Borden moved to approve the minutes of July 13, 2004 as presented. Commission Bresaw seconded the motion. MOTION CARRIED UNANIMOUSLY. Ayes: Borden, Bresaw Carter, Klein, Hammang; Nays: None.

4.0 INFORMATION ITEMS - City Council Minutes
City Council minutes can be found on the City web site at www.cityofmilwaukie.org

5.0 PUBLIC COMMENT - None.

6.0 PUBLIC HEARINGS

6.1 Applicant: Mark and Chantelle Gamba
Owner: Mark and Chantelle Gamba
Location: 10414 SE 24th
Proposal: The applicant is proposing to construct a garage/office in

the front setback that would replace an existing structure. A Water Quality Review is required.

File Numbers: TPR-04-05/VR-04-07/WQR-04-01
NDA: Historic Milwaukie

Chair Hammang opened the minor quasi-judicial hearing for Transportation Planning Review TPR-04-05, Variance Request VR-04-07 and Water Quality Review WQR-04-01 to allow for the construction of a new garage, house addition, and retaining wall. The criteria to be addressed can be found in the Milwaukie Zoning Ordinance Section 19.322 - Water Quality Resource; Section 19.700 - Variances; Section 19.011.3 - Minor Quasi Judicial Review; and Section 19.1404(C) - Transportation Adjustment.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. He asked if any member of the Planning Commission visited the site; 4 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Keith Jones reviewed the staff report with the Commission. The subject site is located off 24th Avenue, north of Harrison Street. He showed overlays of the subject site and surrounding area. The majority of the site is part of a stream or associated wetlands. Adjacent to the house is a fairly steep slope. Photographs were shown of the home and garage.

The owners wish to add on to their house and replace the existing garage. The exiting detached one-car garage will be replaced with an attached two-car garage. A failing retaining wall will be replaced, as well as an addition to the back portion of the house in the kitchen, and a dormer on upper floor with add-on in the bedroom.

The key issues of the application before the Planning Commission:

- The entire property is within the wetland and wetland buffer. The Water Quality Resource regulations define the buffer as being 50-feet from the top of the slope. Because of this the applicant needs to go through a Water Quality Resource application.
- The R-5 Zone requires a 20-foot front setback. By replacing the garage within the front setback, it will require a variance of 2-3 feet to push the garage as far forward as possible away from the wetlands.

The request is a variance to the front setback and a variance to putting road improvements on undeveloped 24th Avenue that ends at the applicant's house and continues through the wetland and stops at Highway 224. The applicant is requesting

approval of the Water Quality Resource application to replace the garage and add onto the house within the Water Quality Resource area. There are existing improvements along the frontage of the house (a 4-foot sidewalk). The minimum in the code is 4-feet, however, they are required to do a 6-foot sidewalk; they then applied to keep the 4-foot sidewalk under a transportation adjustment.

Staff believes that the applicant has demonstrated that the site has physical conditions that are outside of their control, there are no other feasible alternatives to the variances, that potential adverse effects will be mitigated, and that the applicant has complied with applicable city code and staff is recommending approval with the conditions (Attachment I) in the staff report.

CORRESPONDENCE

Mr. Jones reported that a letter was received from Brion Newman, the adjacent neighbor to the south, in support of the application.

QUESTIONS FROM THE COMMISSIONERS - None.

APPLICANT PRESENTATION

Speaking: Eric Hess, Architect

Mr. Hess stated that he was retained by Mark and Chantelle Gamba about a year ago to help with their remodel. Mark and Chantelle moved here a year ago and their children walk to school in their neighborhood. They are concerned about doing the right thing. They have goats in the wetland area eating away at the blackberries.

Both Mark and Chantelle are free-lance photographers. Part of what they wish is to have an office inside their home. There are three land use actions because of the combination of unusual site conditions not found elsewhere in the neighborhood. Only a small portion of the site is developable.

Currently there is a one-car garage with serious structural deficiencies and also the retaining wall to the east and north of the garage. There is a 36-inch Fir tree that the owner's wishing to save to the north of the garage. The improvements include enlarging the kitchen; they are a family of five, with three kids. They would also like to have the additional bedroom space that the improvements would allow.

The neighborhood requires two off-street parking spaces; currently there is only a one-car garage. None of the current trees will be affected by these improvements. The front setback is requested for the garage; they are proposing an office above the garage. The outside exterior of the garage will be of the same materials as the existing house and will conform to the neighborhood character.

The property has unusual conditions over which the applicant has no control. There is not enough space to build a garage elsewhere on the property. There is a 14-foot planting strip that acts as a buffer between the edge of the street and the garage. The garage will provide off-street parking for two cars.

The footprint of the garage only goes about 2 feet closer to the stream. The area in front of the retaining wall will encroach onto a 5'x7' wide area. There is an area of 662 sq.ft. of area to mitigate; 662 sq.ft. of degraded area will be restored. The end of the 6-foot retaining wall has failed (pushing outward). A geotechnical investigation was done and it was found that the best alternative to repairing the wall was to take a foot of space in front of the existing retaining wall to give them the necessary clearance to construct a retaining wall 8-9 feet high.

A rendering was shown which included the proposed remodel of the home, the kitchen area, and bedroom area upstairs. This area is being mitigated with native plantings along the slope.

When the neighborhood was platted the neighbors did not realize there was a wetland. Since they are exceeding 47,000 sq.ft., there is a need for that amount of land use adjustment. They would like to maintain the 4-foot sidewalks instead of going to a 6-foot sidewalk. This will give them the widest possible planting strip in front of the house.

The applicant has worked diligently in the design and feel that these series of solutions does minimize the impact to the wetland quality; the main focus being the water quality resource area. They believe the mitigation compensates for the changes being proposed.

QUESTIONS FROM THE COMMISSIONERS

Teresa Bresaw asked where the 10% nitrous weeds (ivy and night shade) are located? **Mark Gamba** stated that there is ivy on much of the property. They have pet goats that are eating the ivy off the ground and the blackberries along the side of the hill.

Chair Hammang asked if the ivy and nightshade are noxious weeds in this environment? **Mr. Gamba** stated that the ivy and blackberries are not native species; they were pulling down the trees. He has been removing the ivy. The goats are doing a good job of removing the blackberries and ivy.

Brent Carter noted that the upper story loft is being used for professional reasons, is there allocated parking on the street to do business? **Mr. Gamba** stated that he does not have meetings there. He stated that he is a location photographer; most of the work he does is of that nature. The office will be used to keep slides, use the computer, and do their accounting, basic office uses. He uses a photo lab downtown, so it will be used mostly for phone calling, e-mailing and keeping track of slides. Only he and his wife will be using the office. Occasionally there will be an assistant coming in to get ready for a shoot, but there will be no traffic.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF

Keith Jones noted that the application indicates that the office would have a stove and a sink; he asked how these are needed for business use and not become a dwelling unit? **Mr. Gamba** stated that his work is often in extreme conditions; he shoots under water, on mountaintops, rain forests, etc. The equipment sustains a lot of abuse. All underwater equipment has to be rinsed very well in fresh water. The utility style sink in the office is to rinse equipment. The stove will be used to bake the camera to drive the moisture out after he has had a shoot in the rain or snow. This is the only way to drive water out of the equipment or it rusts.

Chair Hammang asked how these appliances are dealt with in the code? **Mr. Jones** stated that a housekeeping unit is defined as a living arrangement within the dwelling unit in which a single common kitchen facility, laundry facility, living and dinning rooms and other general living areas of dwelling and the duties, rights and obligations associated with the performance of domestic tasks and manage of household affairs or shared by the residents in virtual of a legal or mutual relationship. The intent of the code is to have one unit, all common living arrangements. When this property is sold, the next owners may think this is a legal dwelling unit (possible rental). It would not meet the parking requirements for the zoning ordinance.

John Gessner stated that the question is whether or not the units are designed for dwelling purposes. On one hand there is something called a kitchen; there is an indirect relationship between whether or not an interior space has a kitchen, which brings you to whether or not the space is being occupied as a dwelling unit. There is no direct code line between the facilities being proposed and actual residential use.

Chair Hammang noted that the floor plan showed a bathroom unit in the loft. Discussion followed on the intent of the use of the room. **John Gessner** stated that it could be specified in the conditions that it is not intended for residential use.

QUESTIONS FROM THE COMMISSIONERS REGARDING CLARITY

APPLICANT'S CLOSING COMMENTS -- None.

DISCUSSION AMONG THE COMMISSIONERS

Chair Hammang closed the public testimony portion of the hearing and opened it up to discussion among the Commissioners.

Commissioner Bresaw stated that the street is charming and this will make it even more charming.

Commissioner Carter voiced concern over the construction equipment and making sure that the code restrictions are strictly followed for erosion control. **John Gessner** stated that as part of the conditions there is a limit to construction plans that will coincide with erosion control and they will remediate any damage done.

Commissioner Bresaw moved to approve applications TPR-04-05, VR-04-07 and WQR-04-01 authorizing construction of a new garage, house addition, and retaining wall at 10414 SE 24th Avenue and adopt the recommended findings and conditions. Commissioner Carter seconded the motion. MOTION CARRIED 5-0. Ayes: Borden, Bresaw, Carter, Klein, Hammang; Nays: None.

- 6.2 Applicant: City of Milwaukie
 Owner: ODOT
 Location: Along McLoughlin Blvd from Harrison Street to the
 Kellogg Creek Bridge
 Proposal: This is a request to widen and improve McLoughlin Blvd,
 primarily on the west side, encroaching into the water quality
 resource areas of Johnson Creek and Kellogg Creek
 File Numbers: VR-04-08/WG-04-02/WQR-04-02
 NDA: Historic Milwaukie and Island Station

Chair Hammang opened the minor quasi-judicial hearing for Variance Request VR-04-08, Willamette Greenway WG-04-02, and Water Quality Review WQR-04-02 to allow for the reconstruction of McLoughlin Blvd in downtown Milwaukie. The criteria to be addressed can be found in the Milwaukie Zoning Ordinance Section 19.320 - Willamette Greenway; Section 19.322 - Water Quality Resource regulations; and Section 19.10.11.3 - Minor Quasi Judicial Review.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. He asked if any member of the Planning Commission visited the site; 4 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Keith Jones reviewed the staff report with the Commission. The bounds of the proposal are 17th and Harrison Streets, north to the Kellogg Creek Bridge (McLoughlin Blvd. reconstruction) and consists of boulevard improvements and lane reconfigurations. This application is before the Planning Commission because the roadway in downtown Milwaukie is located in both the Willamette Greenway Overlay Zone and the northern part of site (17th Avenue) is located in a Water Quality Resource area as well as the southern portion (Kellogg Creek).

The criteria used in consideration of this application is the Willamette Greenway regulations, which are there to protect the natural, scenic, historic and recreational opportunities of the Willamette River; attempt to limit new urban uses adjacent to the Willamette River; protect views to the Willamette River; provide landscaping and open space buffer between urban uses and the River; provide opportunities for River access and opportunities for recreational use.

Staff believes that the application has demonstrated that the proposal meets this criterion and recommends approval of the Willamette Greenway Overlay Zone. All Willamette Greenway applications are also Conditional Uses; the main portion of the Conditional Use criteria for this application is that the goals and policies of the Comprehensive Plan are met. The topography at the location of the site is suitable for the use proposed, it is timely and there are adequate public facilities as well as a transportation network.

The Water Quality Resource Variance proposed is on the north end of the site at the Johnson Creek Water Quality Resource area. The alternative analysis shows no practical alternatives exist to the proposed development; it is limited to only where it is needed and the adverse impacts are mitigated. The Water Quality Resource Variance requires that there is not an undue economic hardship placed on the applicant by strictly enforcing the Water Quality Resource regulations. There is no viable alternative to what is being proposed.

The mandatory condition on this application is that the buffer is not reduced below 25-feet in width. The standard vegetative corridor is 50-feet in width.

Slides were shown of the windowed-end area of the Johnson Creek Water Quality Resource area and the Kellogg Creek area showing the sidewalk location and asphalt path.

Staff believes the applicant has addressed the criteria and has shown that they comply and recommends that the application be approved with conditions as listed in Attachment I of the staff report.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Borden asked how much of this project is contingent upon acquiring the property now occupied by Vic's Tavern and the Antique Mall and has arrangements being negotiated to purchase the properties. **Mr. Jones** stated that the applicant can address this question in their presentation.

CORRESPONDENCE - None.

APPLICANT PRESENTATION

Speaking: Brion Barnett, Public Works Department, Project Manager for the McLoughlin Project

Brion introduced Walt Bartel, Project Manager for David Evans and Jillian Zacarias of David Evans and Associates

Brion Barnett stated that the city has a separate Intergovernmental Agreement (IGA) with the State of Oregon Department of Transportation (ODOT) to act as the city's right-of-way agents for this project. The city just received notice that they can proceed with the right-of-way phase and ODOT has started to send out their notices. That is why Eric Hutchinson of Vic's Tavern is here tonight.

The agreement that was passed at City Council almost a year ago (proposal passed with the IGA) gives ODOT the ability to use condemnation if necessary to acquire the properties. Staff has been in contact with the owners of the Antique Mall and Vic's Tavern; they have known that this proposal was coming and now the city is giving them more certainty as to the timeline. He will contact these businesses separately outside of this meeting.

Commissioner Bresaw noted that the site of Vic's Tavern is owned by someone else and leased to Vic's Tavern. **Brion Barnett** stated that the proprietors Eric Hutchinson and Mass and Simons are not the property owners, they are the business owners. The compensation for the site goes to the property owner; what they work out with the tenant is their concern. The right-of-way agreement does allow for relocation expenses for the business.

Walt Bartel explained that the project limits are from Kellogg Creek north to Harrison Street. The goal of the project is to convert McLoughlin from its current characteristic (a through highway in Milwaukie) and implement a boulevard street treatment through downtown Milwaukie and improve access to the riverfront for both bicyclist and pedestrians.

The project includes wider sidewalks, bike lanes, planter strips. There will be no additional lanes added to the facility (5-lane facility with 2 through lanes in each

direction and a center turn lane). This will connect to the recreational area and the boat ramp. Also included in the project is:

- Removal of the existing Jefferson Street traffic signal converting it into a right-in and right-out only.
- Installing new traffic signals at Washington Street, including full access to the Sewerage Treatment Plant.
- New signal at Monroe Street.

The traffic signals will be at two-block spacing; previously determined in a traffic study by DKS. The impacts to the riverfront area is due to shifting the center line of the roadway approximately 13-feet to the west to accommodate the buffer between the sidewalk and roadway on the east side and installing the bike lane. Currently there are no bike lanes and this project plans on doing that.

Staff has tried to minimize the impacts to the Willamette Greenway and Water Quality Resource area by trying to hold the project as tight against the east property line within the right-of-way as possible and has worked hard with the city and staff to minimize the footprint of the roadway as well.

Jillian Zacarias stated that there are two main approvals be sought tonight; one is for the conditional use in the Willamette River Greenway and the other is a modification to the Water Quality Resource Areas at Johnson and Kellogg Creeks.

There are 12 criteria to be addressed in the Willamette River Greenway review; issues around compatibility, protecting the natural, scenic, historic, recreation, and economic characteristics. The area is committed to urban uses (downtown), there is a highway going through it now, and the recreation area is a managed open space with a boat ramp and the parking lot. The proposed improvements are consistent with the urban uses that are already in the area.

In terms of issues of compatibility with resources that are in the Willamette River Greenway and protecting those, scenically the project will add significant amount of landscaping, an improvement over what is currently there. It will also enhance the views by resulting in the removal of the two commercial buildings on the west side, thus opening up the views from the east side of the street. While those commercial businesses would be lost, shifting the road to the other side would result in greater commercial impacts on the businesses. The preferred alternative of shifting to the west would still maintain the commercial character as it exists with a minor modification.

The only historic resource that was identified was the Desmeth historic marker and that will be moved to pedestrian plaza located at Monroe Street.

The recreation area will be enhanced by a net increase of useable open space. The road to the sewerage treatment plant will be removed, and be replaced with ground cover and will become available for recreation use.

Another resource is the maintenance of views and adding landscaping and aesthetic enhancements. The proposed project would add a pedestrian plaza, improve landscaping along the roadway, and maintain a view corridor at Monroe Street out towards the River.

Another critical piece of the Willamette Greenway legislation is the protection of public access. This project would maintain motor vehicle access to the boat ramp and recreation area; and improve circulation in the area for pedestrians and cyclists. The natural characteristics in the area are limited to the areas down by the shorelines on the River and Creeks. Those areas are covered by the Water Quality Resource overlay zone.

In the application there is a chapter three that addresses applicable Comprehensive Plan and Policies and staff concurs that compliance has been met. There are general conditional use criteria that the applicant must address; issues of compatibility, conditional uses allowed in the underlying zones and does it conform to the development application. Because this is a transportation project, it is not the same as a typical conditional use and because it is an ODOT facility it is not bound by City of Milwaukie street standards. The site is suitable for the use that is proposed; it is flat and the topography is fine. The utilities needed for electricity for the street lights are already in place.

The second major request is for modification to the Water Quality Resource areas. At the Johnson Creek location, the sidewalk will be moved closer to the Creek. The entire improvement in the buffer area amounts to 2,100 sq.ft. of new impervious surface. The Kellogg Creek sidewalk will match the proposed sidewalk; there will be about 730 sq.ft. of new impervious surface in the corridor. This results in a total of 2,800 sq.ft. of impact. They are proposing a planting area that is equal in surface area to that and it will be planted with native species removing the existing grass and planting Snowberries and species from the native plant list.

Two alternative analyses were done for this project; one for Federal requirements and one that looked at widening to the west or east comparing impacts. Widening to the east would have incurred greater costs for the City to mitigate the impacts.

If no reasonable alternative design exists, the project needs to demonstrate that the impacts are limited as much as possible. The applicant has attempted to minimize impacts by narrowing the width of the travel lanes and narrowing sidewalks. That combined with the proposed mitigation plan will compensate for the new impervious surface in the corridor. The quality of the corridor at Johnson Creek will be enhanced.

The function of the road is for the traffic it carries, the circulation it provides, and the freight corridor; all carry with it impacts from delays to the city and to businesses. By

not implementing the project with this 10-22 foot encroachment towards the River would create an economic hardship for the city and the people who use that roadway, including pedestrians and cyclists.

The applicant has met the criteria for conditional use in the Willamette River Greenway by demonstrating compatibility with existing resources there and limiting the amount of impact to the extent practical. The proposal also meets the criteria to allow modification of the Water Quality Resource areas at Kellogg and Johnson Creeks by demonstrating that no practical alternative exists that would implement plans for this and still accommodate plan improvements for McLoughlin. The impact to the corridors that are there are minimized as much as possible and will be mitigated through the plan they have developed with the native species.

Brion Barnett stated that, project-wide, when the access road is removed at the sewerage treatment plant, the remainder of what is left on the property for Vic's and the Antique Mall, the park will gain over 7,000 sq.ft. of additional green space.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked about the location of the current storm drainage? **Brion Barnett** stated that the storm drainage for the entire site heads down south into catch basins going out to Kellogg Creek (eastside onto the bank and by the fish ladder). **Walt Bartel** stated that at Kellogg Creek there are two existing outfalls; it is their intent to use the existing outfalls and just run to parallel drain pipes to those systems. By decreasing the total amount of impervious surfacing with this project, it will decrease the discharge that goes into Kellogg Creek.

There are two directions of flow at Jackson Street (crest curve); the water south from there flows to Kellogg Creek and the water north of Jackson Street flows towards Johnson Creek or goes into the ODOT drainage system. There is a water quality detention facility between 17th Avenue and McLoughlin Blvd.; the discharge goes into the water quality swale before it is discharged into Johnson Creek.

Chair Hammang asked who is responsible for maintaining the mitigation site in the future to make sure plants don't die in the first year, etc? **Walt Bartel** stated that once the project is completed, it comes with a plant establishment period. The minimum plant establishment period is one year; some projects it has been extended to three years. It is the intent to provide an irrigation system for the buffer area, mitigation site, plantings in the planter strip behind the sidewalk on the west side, as well as the median on the east side. It will be the contractor's responsibility for maintenance during the establishment period and ultimately it will be the city's responsibility.

Commissioner Carter asked if the cross walk will be painted, stamped concrete, or stamped asphalt? **Brion Barnett** stated that they are not here tonight for transportation review. Ongoing talks with ODOT on trying to use downtown design guidelines like

stamped concrete within ODOT right-of-way. Negotiations are in the works for a maintenance agreement; current direction based on ODOT's response; use of stamped concrete or other non-traditional, non asphalt type surfaces for intersection or cross walk treatments. The city would have to assume the maintenance responsibilities. It looks like it might be the city's responsibility.

Commissioner Carter voiced safety concerns about loose rock being proposed for the meridians. **Brion Barnett** stated that the plans show a rock structure but it is something that is mixed with concrete; it is not loose, it is an aesthetic feature.

Commissioner Carter noted that the Illumination Layout seemed a little dark on Washington and past Harrison. Is there only illumination between Jackson and Jefferson? **Walt Bartel** stated that there is illumination throughout the corridor on both sides. There is a combination of luminaries on the traffic signal poles, so the Cobra heads are at a higher mounting height at Washington, Monroe, and Harrison. In between will be the more ornamental acorn street lights.

TESTIMONY IN FAVOR -- None.

QUESTIONS OR COMMENTS -- None.

TESTIMONY IN OPPOSITION -- None.

ADDITIONAL COMMENTS FROM STAFF

Keith Jones noted on 6.2, page 23 of the staff report, recommended condition #2 has a term (opticom) that needs definition. He suggested an additional sentence, "Opticom is a device that turns the traffic light green for emergency vehicles."

QUESTIONS FROM THE COMMISSIONERS REGARDING CLARITY

APPLICANT'S CLOSING COMMENTS -- None.

DISCUSSION AMONG THE COMMISSIONERS

Chair Hammang closed the public testimony portion of the hearing and opened it up to discussion among the Commissioners.

Commissioner Bresaw moved to approve applications VR-04-08, WG-04-02, and WQR-04-02 authorizing the City of Milwaukie and the Oregon Department of Transportation to make road improvements to McLoughlin Blvd. in downtown Milwaukie between the Harrison Street/17th Avenue intersection and the Kellogg Creek Bridge and adopt findings and conditions as indicated in the staff report, revising Condition #2 on Page 23 with the additional sentence, "Opticom is a

device that turns the traffic light green for emergency vehicles.” Commissioner Borden seconded the motion. MOTION CARRIED 5-0.

Ayes: Borden, Bresaw, Carter, Klein, Hammang; Nays: None.

7.0 WORKSESSION ITEMS -- None.

8.0 DISCUSSION ITEMS

9.0 OLD BUSINESS

10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director

John Gessner updated the Commission on the hearings planned for the next Commission meeting.

10.2 Design and Landmark Commission Report

Brent Carter reported that the DLC will be meeting on August 25th to review the historic Cambridge house for remodel and the north Main project continuation. There was a decision made to forward to Council approval for changing the Design Landmarks Commission to a Committee at that meeting.

Commissioner Borden asked for clarification of an un-rankable property. **John Pinkstaff** (attorney) stated that there are three designations in the historic code; significant property, contributing property and unrankable property.

11.0 NEXT MEETING - August 24, 2004

11.1 MLP-03-01 - Request for Final Plat Extension – Reich – 5650 SE King Road

11.2 Undersized Lots – Worksession

11.3 No. Clackamas Parks Advisory Review on Westland – Worksession

11.4 Garage in Front Yards - Worksession

Commissioner Bresaw moved to adjourn the meeting of August 10, 2004. **Commissioner Carter** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 9:05 p.m.

CITY OF MILWAUKIE
PLANNING COMMISSION MINUTES
TUESDAY, JULY 13, 2004

COMMISSIONERS PRESENT

Donald Hammang, Chair
Judith Borden, Vice Chair
Teresa Bresaw
Brent Carter
Rosemary Crites
Howard Steward

COMMISSIONERS ABSENT

None.

STAFF PRESENT

John Gessner,
Planning Director
Lindsey Nesbitt,
Associate Planner
Alice Rouyer
Comm. Dev. Dir.
Jeff King,
Project Manager
Shirley Richardson,
Hearings Recorder

1.0 CALL TO ORDER

The meeting was called to order at 6:30 p.m.

2.0 PROCEDURAL QUESTIONS - None.

3.0 CONSENT AGENDA

3.1 June 9, 2004 Planning Commission Minutes

3.2 June 22, 2004 Planning Commission Minutes

Chair Hammang added two agenda items; the April 8, 2004 Planning Commission minutes and the April 13, 2004 Planning Commission minutes that have not yet been approved.

3.3 April 8, 2004 Planning Commission Minutes

Commissioner Bresaw moved to approve the minutes of April 8, 2004 as corrected. Commissioner Carter seconded the motion. MOTION CARRIED 6-0.
Ayes: Borden, Bresaw, Carter, Crites, Steward; Nays: None

3.4 April 13, 2004 Planning Commission Minutes

Commissioner Bresaw moved to approve the minutes of April 13, 2004 as presented. Commissioner Carter seconded the motion. MOTION CARRIED 6-0.
Ayes: Borden, Bresaw, Carter, Crites, Steward; Nays: None.

3.1 June 9, 2004 Planning Commission Minutes

Commissioner Bresaw moved to approve the minutes of June 9, 2004 as presented. Commissioner Carter seconded the motion. MOTION CARRIED 5-0 with one abstention. Howard Steward was not at that meeting.

Ayes: Borden, Bresaw, Carter, Crites; Nays: None.

3.2 June 22, 2004 Planning Commission Minutes

Commissioner Bresaw moved to approve the minutes of June 22, 2004 as presented. Commissioner Borden seconded the motion. MOTION CARRIED 6-0.

Ayes: Borden, Bresaw, Carter, Crites, Steward; Nays: None.

4.0 INFORMATION ITEMS - City Council Minutes

City Council minutes can be found on the City web site at www.cityofmilwaukie.org

5.0 PUBLIC COMMENT - None.

6.0 PUBLIC HEARINGS

- 6.1 Applicant: Portland Parks and Recreation
Owner: Metro
Location: Springwater Trail between McLoughlin Blvd. and the Union Pacific Railroad.
Proposal: Applicant is proposing to construct 3 bridges and related trail improvements. Two bridges are located in Milwaukie; one over McLoughlin Blvd., and the other over the Union Pacific Railroad.
File Numbers: CSO-04-03
NDA: Ardenwald

Chair Hammang opened the minor quasi-judicial hearing for to consider Community Service Overlay CSO-04-03 to construct three bridges and related trail improvements. The criteria to be addressed can be found in Milwaukie Zoning Ordinance Section 19.321 - Community Service Overlay Zone; and Section 19.1011.3 - Minor Quasi Judicial Review.

Chair Hammang asked if there were any conflicts of interest or ex-parte contacts to declare? There were none. He asked if any member of the Planning Commission visited the site; 2 hands were raised. No one who visited the site spoke to anyone at the site or noted anything different from what is indicated in the staff report. No one in the audience challenged the impartiality of any Commission member or the jurisdiction of the Planning Commission to hear this matter.

STAFF REPORT

Lindsey Nesbitt reviewed the staff report with the Commission. The proposal includes the construction of three bridges and related trail improvements. The proposed bridges will help create an important bicycle and pedestrian connection from Milwaukie through Sellwood and on to downtown Portland, as well as completing a critical link in the 40-mile loop.

Two of the three bridges will be located within the city of Milwaukie; one over McLoughlin Blvd. and the other over Union Pacific Railroad. The third bridge will be located in the City of Portland at Johnson Creek. In addition to the three bridges, the proposal includes construction of new trails, improvements to existing trails, native landscaping and the installation of signage and bollards where the trail merges with the right-of-way. Part of the proposal is temporary traffic controls on McLoughlin Blvd.

The applicant is requesting approval of the Community Service Overlay application. The applicant has the burden to demonstrate that the proposed use is in the general interest of the public, of benefit to the public, and exceeds any potential negative impacts. Page 3 and 4 of the staff report lists benefits of this proposal: critical link in the 40-mile loop, provide recreational travel, increase health benefits, and reduce cut-through traffic through the neighborhoods.

The applicant has identified impacts associated with this proposal and provided mitigation to those impacts:

- Potential for vehicular conflicts with pedestrians/bicycles. Bollards and signage will be installed.
- Potential for crimes, noise, and vandalism. Police enforcement and increased use in the trail will allow decrease in impacts.
- Construction Noise. Milwaukie has recently adopted a construction ordinance that limits construction hours; it is reflected in the conditions of approval.

Staff believes that the applicant has demonstrated compliance with the Community Service Overlay criteria. The application is consistent with the goals and policies of the Comprehensive Plan.

QUESTIONS FROM THE COMMISSIONERS - None.

ADDITIONAL CORRESPONDENCE - None.

APPLICANT PRESENTATION

Speaking: Scott Keilor, Harper, Hoff, Peterson and McGillis

Mr. Keilor stated that he is here tonight representing the Portland Parks Department. He introduced George Lozovoy, Portland Parks; and Kerry Rader, Construction Engineer, Obeck Consulting.

Mr. Keilor stated that he has read the recommended conditions and find that they are reasonable. He presented boards showing the suspension bridge for McLoughlin Blvd., aerial maps and additional graphs. The key to the community service overlay criteria is the wing of the public benefit of the project. The reach of the project is the terminus of the Springwater trail at the east side of the Union Pacific Railroad site. There will be a transition from the residential zone into the industrial area. This end would involve a steel truss over the rail line and continuing on the former rail bed extending westerly crossing McLoughlin with a bridge. The trail then goes along and crosses over into Portland where the truss at Johnson Creek connects through Sellwood and the City of Portland. The project has a significant effect in terms of completing a major component of Milwaukie's Comprehensive Plan, which supports the 40-mile loop and provides for direct local access to this trail system. This benefit includes the recreational aspects of the trail, the commuter access, and the travel options.

There will be mitigation for conflicts with pedestrians, bicycles and vehicles by use of access control bollards and signing. This is a separated trail system; it is off-road. It does have points of connection with the road system where bollards will be used. This off-street trail system is safer than one traveling in the alternative modes on the street system. There is a switchback on the east side of McLoughlin that comes down to grade; there is access to shopping and transit opportunities.

Mr. Keilor clarified that the width of the McLoughlin span is adequate to accommodate future light rail transit; it is not proposed with the project but it allows for the horizontal and vertical clearances needed to complete a light rail alignment in the future.

In terms of potential impacts, they were careful to note that the trail as it terminates now is elevated above residential properties. There will be some repaving and temporary construction; however, any construction noise will be limited and conducive to residents and users of the trail.

The project is sensitive to protecting the wetland resource that has been identified southeast of the rail crossing. There is a 15-foot buffer; there is no reason to encroach within 50-feet of the buffer. They are fine with the condition relating to this buffer.

Mr. Keilor stated that the Portland Park System is committed to maintenance of the trail and to work with Milwaukie and local police forces, as needed, to identify and resolve any problems along the trail segment to crime or vandalism. It is important that this project be a positive impact on the overall trail system. He urged the Commission's approval of the three bridge project through Milwaukie.

QUESTIONS FROM THE COMMISSIONERS

Commissioner Bresaw asked for the location of the bridge that is proposed for McLoughlin Blvd. **Mr. Lozovoy** stated that he works for Portland Parks and is the project manager on the site. The bridge will be located on the west side of the McLoughlin bridge on the west side of the berm. The ramp will be located on the east side of the McLoughlin bridge on the north side of the berm. A picture was shown of the exact location.

Commissioner Carter stated that he did not see any site lighting; is there any site lighting proposed? **Mr. Lozovoy** stated that there would be no additional lighting; only adjacent ambient lighting.

Commissioner Carter asked if there was a larger plan showing details and the overall layout of the project? **Mr. Lozovoy** provided a larger site plan showing the location of the drinking fountain and benches.

TESTIMONY IN FAVOR

Speaking: Sheri Campbell, 3803 SE Filbert, Milwaukie

Ms. Campbell stated that she is the vice-president of the Ardenwald Neighborhood Association and has been on the public involvement committee for the three bridges project for the past year. The neighborhood is in support of this project; the Springwater Trail goes through their neighborhood (both Portland and Milwaukie residents) and they are very happy about the improvements. She stated that the current entrance to Milwaukie is a nudity bar and adult bookstore; this signature bridge will be a beautiful new entrance feature.

The Ardenwald Neighborhood was not in favor of the Tacoma Overpass because it was anti-handicapped; this has ways for the handicapped to get up to the Springwater Trail and access to public transportation. The neighborhood feels that this improvement will enhance the Johnson Creek area. They encourage the Commission to pass this project; a letter has been sent to the City in support of this application.

Speaking: Jim Young, 1212 SE 39th, Milwaukie

Mr. Young stated that he is an avid cyclist and has done a lot of recreational biking. He has used the Springwater Corridor and this improvement will be an asset and improve accessibility. He asked what is going to happen between 19th and the end of the trail near Tacoma? There is a gap in the trail. Will there be anything done to finish up that stretch? **Mr. Lozovoy** stated that they are applying for federal funding in order to complete that mile and a half gap (from SE 19th to SE Umatilla).

Mr. Young noted that the Parks Department has acquired the railroad track that goes south towards Oregon City; is there any planning proposed for that portion of the track? **John Gessner** stated that this is part of the Trolley Trail Project which is in the design phase. This project through North Clackamas Parks will be coming to the Planning Commission for Comprehensive Plan amendments in the coming months. This will connect with the corridor by an on-street connection at the 17th Avenue bike lane.

QUESTIONS OR COMMENTS - None.

TESTIMONY IN OPPOSITION - None.

ADDITIONAL COMMENTS FROM STAFF

Mr. Gessner voiced concern of the scope of authority that will be delegated to the Planning Commission in reviewing the construction staging and access plan. Staff does not have all the details on what sites are going to be required and what routes through neighborhoods will be used for construction access. One area of concern is in the Ardenwald Neighborhood on Sheritt Street, which provides a right-of-way access to the Springwater Corridor. Staff is hoping that Portland Parks and the project team will be able to work with the neighborhood to agree to an acceptable construction access plan so that it minimizes impacts, reducing conflict resolution during time of construction. Staff will do their best to help resolve the practical needs of the project (construction, access, and staging) and work with the neighborhood to make sure that it doesn't become unbearable during construction. He asked the construction team how long the construction would take?

QUESTIONS FROM THE COMMISSIONERS REGARDING CLARITY - None.

APPLICANT'S CLOSING COMMENTS

Speaking: Gary Ringer, Obeck Consulting Engineers,

Mr. Ringer stated that the timing is to bid this project in October/November and to be done by September 2006. The duration of construction will be about 1 year and 7/8 months.

DELIBERATION AMONG THE COMMISSIONERS

Chair Hammang closed the public portion of the hearing and opened the meeting to deliberation among the commissioners.

Commissioner Carter voiced concern that the only police presence will be on scooter or motorcycle. If there was more lighting, it would deter vandalism and crime? In Eugene, on their trail system, there are lighted bollards every 50-100 yards. He would like to see

if there is a possibility of getting more lighting. **John Gessner** suggested that this issue be raised with the project team to find out how lighting has factored into the existing trail.

Chair Hammang reopened the public portion of the hearing to address the lighting issue. **Mr. Lozovoy** stated that there is new existing lighting on the Springwater Corridor that has been in place for six years. Anything east of the Union Pacific bridge is covered. There is no policy for lighting on any of their pedestrian routes.

Commissioner Howard asked if there is a possibility of looking at generated lighting? **Mr. Lozovoy** stated that it is feasible, but from the operational maintenance standpoint it would be difficult. There is the technology there; but funding is limited. The trail is accessible to police vehicles and the bridges will accommodate vehicles as well (10,000 lbs). It is not uncommon for the police to be on the sites.

Chair Hammang closed the public portion of the hearing and opened the meeting to a decision by the Commission.

Commissioner Borden stated that she is very happy with this project and she is looking forward to the completion of the project. She would love to see some obvious demarcation of an entrance into Milwaukie.

Commissioner Bresaw moved to approve application CSO-04-03 completion of the Springwater Trail between McLoughlin Blvd. and the Union Pacific Railroad to construct three bridges and related trail improvements with the recommended findings and conditions as stated in the Staff Report. Commissioner Borden seconded the motion. MOTION CARRIED 6-0.

Ayes: Borden, Bresaw, Carter, Crites, Steward, Hammang; Nays: None.

7.0 WORKSESSION ITEMS - None.

8.0 DISCUSSION ITEMS - None.

9.0 OLD BUSINESS - None.

10.0 OTHER BUSINESS / UPDATES

10.1 Matters from the Planning Director- None.

Discussion followed between a Portland representative and the Commission regarding flag lots. **Commissioner Bresaw** asked if a lot is considered a flag lot if it has an easement driveway as opposed to outright ownership? **George Lozovoy** stated that a flag

lot is defined as a lot whose boundaries contain a pole. If there is an easement, it is not the boundary of the lot; that is an access over another defined unit of land.

Chair Hammang stated that there is a platted lot that has access to it other than a potential easement. **Mr. Lozovay** stated that an easement is a recognized method of gaining access and it avoids flag lot restrictions. If you have a land-locked parcel and the question is if there is any way that the parcel can get access other than acquiring the land to create a flag lot or an easement over the intervening lot; the answer is yes there is a statutory way in which the person pays damages for the right to have access to the public right-of-way.

John Gessner noted that there are several easements on this particular site; a public utility easement to allow cable, electric, and gas; and the pedestrian easement that covers the required sidewalk. The sidewalk is on both lot 16 and 17. There is the vehicular easement that applies over the portion of lot 15 that is necessary to gain driveway access to lot 16. There are a number of easements there.

The Commission was provided detailed discussion of the issue of easements in the staff report. The developer was able to get four lots that otherwise would have been precluded. It would help staff during Commission review of the staff reports to inform staff of what doesn't feel right about recommendations.

10.2 Design and Landmark Commission Report

Commissioner Carter reported that the Design and Landmark Commission will be meeting on July 22nd to adjourn their Commission into a Committee. **John Gessner** reported that a recommendation will be made to Council on the 22nd to support the specific code changes that will be necessary for the Council to convert the Commission to a Committee.

11.0 NEXT MEEETING - August 10, 2004

It was decided to tentatively cancel the meeting of July 27, 2004. The next scheduled meeting will be August 10, 2004 unless otherwise notified.

Teresa Bresaw moved to adjourn the meeting of July 13, 2004. **Brent Carter** seconded the motion. MOTION PASSED UNANIMOUSLY.

The meeting adjourned at 8:05 p.m.

Donald Hammang, Chair

Shirley Richardson, Hearings Reporter

